Hospital San Rafael, Inc.; and Centro Medico del Turabo, Inc. and Joaquin Rodriguez d/b/a Turabo Medical Center Limited Partnership d/b/a Hospital Interamericano de Medicina Avanzada *and* Union Nacional de Trabajadores de la Salud, 1199, affiliated with National Union of Hospital and Health Care Employees, AFL–CIO

Centro Medico del Turabo, Inc. and Joaquin Rodriguez d/b/a Turabo Medical Center Limited Partnership d/b/a Hospital Interamericano de Medicina Avanzada; and Caribe Hospital Affiliates, Inc. *and* Union Nacional de Trabajadores de la Salud, 1199, affiliated with National Union of Hospital and Health Care Employees, AFL–CIO. Cases 24–CA–5646, 24–CA–5722, 24–CA–5886, 24–CA–5889, 24–CA–5949, and 24–CA–6030

August 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On June 19, 1991, Administrative Law Judge George F. McInerny issued the attached decision. The General Counsel filed exceptions and a supporting brief, the Charging Party filed exceptions, and the Respondents filed exceptions and a supporting brief. The General Counsel filed an answering brief to the Respondents' exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified below and to adopt the recommended Order as modified and as set forth in full below.

As more fully discussed in the judge's decision, Respondent Hospital San Rafael, Inc. (HSR) operated a general hospital in Caguas, Puerto Rico, from approximately 1933 until November 14, 1988. In 1978, HSR was experiencing significant financial problems and was unable to comply with certain medicare requirements, mainly because of an antiquated physical facility. In view of these difficulties, the principals of HSR decided to build an entirely new hospital facility.

In August 1978, Respondent Centro Medico del Turabo, Inc. (CMT) was organized to plan and eventually to build a new facility to replace the facility operated by HSR. In 1980, Respondent Turabo Medical Center Limited Partnership (TMCLP) was established to act as CMT's operating arm in the planning, financing, and construction of this new facility, and to operate the new facility once it opened for business. In 1983, after CMT obtained the requisite permission from the department of health in Puerto Rico, HSR agreed to surrender its operating license for the existing facility on CMT's opening the new facility. Construction on this new facility, later known as Hospital Interamericano de Medicina Avanzada (HIMA), was eventually completed in 1988. At that time, Respondent Caribe Hospital Affiliates, Inc. (CHA) was contracted to manage the day-to-day operations of Respondent HIMA.

Throughout this 10-year period, day-to-day operations at HSR were maintained. On November 19, 1988, 5 days after the HSR facility closed, HIMA opened for business.

Since January 30, 1984, the Union Nacional de Trabajadores de la Salud, 1199, has been the certified collective-bargaining representative of two separate units of HSR employees: a professional-employees unit of registered nurses and pharmacists and a technical-employees unit which includes licensed practical nurses. Following certification, the Union and HSR negotiated a collective-bargaining agreement for both units effective from September 1, 1984, to August 31, 1987. Article XXIII, section 3, of this agreement provides that the contract ''will remain in full force and effect until the promulgation of a new Agreement.'' In May 1987 both the Union and HSR requested negotiations for a successor contract. On July 20, 1987, the Union submitted bargaining proposals that included CMT in the new contract's coverage. HSR refused to negotiate and insisted on the deletion of CMT from the Union's contract proposals.

The Union filed several unfair labor practice charges alleging, inter alia, that HSR refused to bargain in good faith during the 1987 contract negotiations. On May 19, 1988, these charges were settled. The Union withdrew them, but their withdrawal was conditioned on the Respondents' compliance with two written non-Board settlement agreements. One of these documents was signed by the Union and HSR, and the other document was signed by the Union and CMT. Thereafter, both the Union and the General Counsel requested that the previously withdrawn charges be reinstated and consolidated with charges filed by the Union against the Respondents after May 19, 1988. The new charges alleged further violations of Section 8(a)(1), (3), and (5) by the Respondents.

The judge found that HSR and CMT[1] constitute a single employer and are alter egos, and, alternatively, found that CMT is a successor employer to HSR. In light of his single employer and alter ego findings, the

[1] The judge found that CMT was and is doing business as TMCLP, which in turn does business as HIMA. In addition, the judge found that CHA (which manages HIMA) is a joint employer with CMT and its subsidiaries TMCLP and HIMA. There were no exceptions to these findings.

judge set aside paragraphs 1, 2, and 3 of the May 19, 1988 non-Board settlement agreement with the Union signed by HSR, and he reinstated the corresponding portions of the previously withdrawn charges and complaints alleging that HSR had refused to bargain in good faith during the 1987 contract negotiations with the Union. We agree with the judge's determination that the evidence establishes both single employer and alter ego status for the Respondents[2] and that it warrants partially setting aside the settlement agreement as he sets forth.[3] For this reason, we find it unnecessary to pass on the judge's alternative successorship findings, conclusions, and proposed remedy.[4]

The judge found numerous violations of Section 8(a)(5) and (1) of the Act committed by the Respondents. He found that HSR had unlawfully insisted on the deletion of CMT's name from the Union's 1987 bargaining proposals and on the exclusion of CMT from the 1987 bargaining process. He also found violative the January 14, 1988 statement by Felix Ortiz Collazo, then director of human resources and industrial relations at HSR, indicating that the Respondents would no longer recognize the Union and adhere to their last contract with the Union. The judge found another violation of Section 8(a)(5) occurred after the execution of the May 19, 1988 settlement agreements when the Respondents refused to bargain further on September 14, 1988, unless the Union agreed to a contract clause limiting the scope of the successor contract to HSR and excluding CMT from its coverage. The judge found additional 8(a)(5) violations committed on various dates between October 25, 1988, and January 5, 1989, in connection with the Respondents' refusal to recognize the Union as the exclusive bargaining representative for employees working at the new hospital facility. Finally, the judge found that the Respondents unilaterally changed wages, hours, and working conditions of unit employees in violation of Section 8(a)(5).[5] For the reasons given by the judge, we adopt all these findings.

The judge also found that the Respondents, in response to the Union's bargaining demands following the August 8, 1989 order of the district court, violated Section 8(a)(5) and (1) by (1) initially refusing to bargain because they intended to appeal the court order; (2) refusing to meet after August 24, 1989, until the Union submitted a full contract proposal; and (3) displaying an intent to delay negotiations through the totality of their conduct from August 10 through October 10, 1989. Relying on the judge's first and second grounds only, we find that the Respondents unlawfully refused to bargain with the Union after August 8, 1989.[6]

We now turn to the 8(a)(3) allegations. Five known union supporters—Milton Suarez, Carmen Merced, Isabel Arriaga,[7] Norma Flores, and Delia Diaz—applied

[2] We do not rely on the judge's finding in fn. 31 of his decision that HSR and CMT were not actual employers at the same time. Contrary to the judge, the record reveals that CMT was in existence and operating over a significant period of time before HSR officially closed for business on November 14, 1988. In mid-1988, CMT began its hiring process for HIMA employees by distributing job applications and by interviewing and screening prospective applicants. In addition, the transition of operations from HSR to HIMA commenced November 13, 1988, as found by the judge.

[3] We disavow the judge's reliance on *Auto Bus, Inc*., 293 NLRB 855 (1989), and *NLRB v. Northern California District Council*, 389 F.2d 721 (9th Cir. 1968), because those cases are not germane to the settlement agreement issues under consideration here.

In refusing to vacate the non-Board settlement agreement executed by HSR, our dissenting colleague ignores the judge's underlying findings which, in our view, are clearly supported by the record. As the creation of HSR, CMT came into existence long before the non-Board settlement was reached, and it operated, at all times during that 10-year period, to achieve a new facility to replace the HSR facility. As found by the judge, CMT and HSR knew that they had common ownership, common management, common supervision, common business purpose and customer base, and shared control of labor relations. As the judge also found, ''CMT continuously and adamantly refused to admit its relationship with HSR to the Union.'' The Respondents' action in this regard provide further support for the judge's finding, which we adopt, that HSR never intended to comply with the settlement agreement by bargaining in good faith, because it never intended to bargain with the Union on behalf of CMT.

Contrary to our colleague, the Union's having signed separate settlement agreements with HSR and CMT, covering different subjects, and the fact that CMT was not fully operational until months later, do not require a different result. Clearly, given the Respondents' continuing efforts to appear to be unrelated enterprises, their signing separate agreements can hardly be taken as positive evidence of their good faith. That CMT had not begun treating patients at the time the settlement agreements were concluded is neither here nor there; as the thinly disguised continuance of HSR, CMT did not have to be fully operational to be HSR's alter ego. See, e.g., *Magnet Coal, Inc*., 307 NLRB 444 (1992). HSR thus had a duty to bargain for CMT, to the extent meaningful bargaining could take place, even though CMT had not yet become fully operational. In these circumstances, we are unwilling to allow this hospital entity, whether the Respondents use the name HSR or CMT, to escape the bargaining obligations flowing from their single employer/alter ego status.

[4] Consistent with our adoption of the judge's single employer and alter ego findings, we shall order the Respondents to recognize and bargain with the Union concerning both the professional employees unit (unit A) and the technical employees union (unit B). Contrary to the judge, we do not find that the General Counsel or the Union ever abandoned their contention that unit A is represented by the Union.

[5] The General Counsel requests that the Board modify the judge's remedy to include an order not only requiring the Respondents to rescind the unilateral changes but also to abide by its prior 1984–1987 collective-bargaining agreement with the Union, which contained an automatic renewal clause. We have included this modification in our Order because we agree that the record shows that the Respondents also failed to honor the 1984–1987 agreement which, by its own terms, remains effective until a successor contract is reached. See *McAllister Bros*., 278 NLRB 601 (1986).

[6] Because we view the judge's remaining ground as cumulative, we find it unnecessary to pass on it.

[7] The Respondents except to the judge's finding that Isabel Arriaga was a union delegate. Whether Arriaga actually served as a union delegate is not significant since information supplied to the Respondents in the Union's letter dated April 13, 1987 (G.C. Exh. 97), indi-

for various jobs at HIMA prior to its opening for business on November 19, 1988. All five individuals had been long-term employees of HSR, and each one was denied employment at HIMA by Arelis Veintidos, the assistant director of human resources at HIMA. The judge found violations of Section 8(a)(3) and (1) with respect to Suarez, Merced, Arriaga, and Flores, but dismissed a similar allegation pertaining to Diaz. The Respondent and the Charging Party filed exceptions. For the reasons discussed below, we adopt the judge's findings of 8(a)(3) violations, but we reverse his dismissal of the Diaz allegation.

In *Wright Line*,[8] the Board set forth its causation test for cases alleging violations of the Act which turn on employer motivation. The General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a ''motivating factor'' in the employer's decision. The burden then shifts to the employer to demonstrate that the same action would have taken place notwithstanding the protected conduct. In rebutting the General Counsel's case, the employer cannot simply present a legitimate reason for its action, but must also persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct. *Roure Bertrand Dupont, Inc*., 271 NLRB 443 (1984).

Applying the principles of *Wright Line*, we adopt the judge's findings that Suarez, Merced, Arriaga, and Flores were unlawfully denied employment at HIMA because of their union activities. The General Counsel made the requisite prima facie showing that the Respondents' actions were motivated by unlawful considerations. As found by the judge, the Respondents' antiunion animus was manifested in several different ways, including their maintaining a facade of two separate entities, designed, at least in part, to impede union representation at HIMA. Relying on this strong evidence of antiunion animus, the judge found that the hiring process for HSR employees was a sham and that the ''Verification of Employment References'' forms[9] assertedly used by Veintidos as the sole basis for her hiring decisions at HIMA were not the sole criterion for hire. He further found that the verification forms were poorly prepared, were incomplete in critical areas, and failed to explain ambiguous and unintelligible remarks about the individual employee's work history which were never clarified by Veintidos. In this regard, Veintidos admittedly never investigated nor inquired about any of the incidents, discipline, and comments described in the verification forms. In addition, Veintidos was unable to explain satisfactorily why she had rejected Suarez, Merced, Arriaga, and Flores while hiring other applicants whose verification forms contained examples of similar work deficiencies and discipline. In these circumstances, the judge found that the asserted reasons for the denial of employment at HIMA to Suarez, Merced, Arriaga, and Flores were pretextual and that these employees were denied employment because of their union activities at HSR, which were known by Veintidos.

We further find that the Respondents have failed to demonstrate that they would have taken the same action against Suarez, Merced, Arriaga, and Flores in the absence of their union activity. In their exceptions, the Respondents renew their assertion that the verification forms were the sole criterion used[10] and that they justify Veintidos' decision not to hire these employees. In this respect, they argue that Flores, Merced, and Suarez had serious absenteeism problems and were disciplined for such conduct and that Merced had also been disloyal by telling patients that she would not want to be hospitalized at HSR. We, however, observe, as did the judge, that other job applicants were hired or remained employed by the Respondents notwithstanding similarly poor work records reflected by their verification forms, yet Veintidos was unable to explain satisfactorily the reason for the apparent disparate treatment.[11]

With respect to Arriaga, the Respondents also contend that her professional competence as a registered nurse is questionable because she was disciplined for altering patient records.[12] We also reject this explanation. The record shows that before Arriaga submitted her application at HIMA the Respondents did not consider her conduct at HSR sufficiently serious as to justify her dismissal. Rather, Arriaga was simply placed on a 15-day suspension in June and thereafter returned

cates that Arriaga had delegate status. Moreover, the record shows that Arriaga engaged in other open union activity which is described in sec. III,D,5,B of the judge's decision.

[8] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). This case was approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983).

[9] The form was a one-page document to be complied by the applicant's previous employer and then submitted to HIMA. The form focused on obtaining information pertaining to the applicant's employment history (e.g., attendance record, discipline, and commendations) of the prior 2 years.

[10] In view of this assertion, we find that whatever other information about the applicant's employment record the Respondents may have possessed was not a factor in HIMA's hiring considerations.

[11] In addition, the Respondents contend that Flores and Merced would have been rejected in any event because they had applied only for positions which had existed at HSR but did not exist at HIMA. The judge rejected this contention. We agree. As found by the judge, Veintidos never informed Flores and Merced that they were seeking nonexistent positions nor did she apprise them of other available registered nurse positions at HIMA.

[12] The Respondents claim that Arriaga also forgot to give a blood transfusion to a patient in June 1988, an incident not described in Arriaga's verification form. We find that Veintidos, who testified that she relied solely on the applicant's verification form for information about the applicant, was not aware of this purported incident when she decided to effectively terminate Arriaga's employment.

to work and remained employed, apparently without any further incident, until HSR officially closed in November.[13]

Accordingly, we find that the Respondents' exceptions regarding Suarez, Merced, Arriaga, and Flores lack merit and that the Respondents did not meet their *Wright Line* burden.

On the other hand, we find that the Charging Party's exception concerning Diaz has merit. The General Counsel alleged that since April 4, 1989, the Respondents have refused to employ Delia Diaz as a medical records technician at HIMA. The judge found that two other individuals were instead hired for that type of position at HIMA in April and June 1989. He found that Diaz was not hired by the Respondents because Veintidos ''logically assumed that Diaz was not working for [HSR], and was not on a list of people either coming to HIMA or being laid off at HSR.'' On the basis of this assumption, the judge found no violation of the Act. We reverse.

Contrary to the judge's findings, Veintidos uncontrovertedly testified that she did not employ Diaz at HIMA because she assumed that Diaz had a job at HSR. However, in light of the circumstances, reflected in uncontroverted testimony, more fully described below, even this assumption held by Veintidos does not justify the Respondents' actions towards Diaz.

Diaz was an active union supporter who had worked as a medical records technician at HSR for 6 years. In a late-summer 1988 interview with Veintidos, Diaz showed interest in working for the Respondents at HIMA and accepted a job application which she later completed and returned. This application, dated October 13, 1988, indicates that Diaz preferred a medical-records-technician position at HIMA.

Diaz was never contacted about her pending application at HIMA. In late October 1988, she telephoned Veintidos to assertain the status of her application. Veintidos never returned these telephone calls from Diaz, who continued to work in the medical records department at HSR.

After Diaz received a termination letter from HSR on November 7, 1988, Diaz spoke with Elsa Maldonado, her supervisor at HSR,[14] who told her to disregard the letter because it was a mistake. At the end of November 1988, Diaz again approached Maldonado to see if she knew when her transfer to HIMA would occur. Diaz indicated that if she was not offered a job at HIMA soon that she could no longer remain at HSR where the work was winding down. Maldonado told Diaz that she knew nothing about Diaz' situation. Then by letter dated November 30, 1988, Maldonado asked Diaz to verify within the next 5 working days that she wanted to continue working at HSR.

On December 9, 1990, Diaz contacted Maldonado about the November 30 letter. Diaz went to the HSR facility and discovered that the medical records department had been closed and that Maldonado was already working at HIMA. She telephoned Maldonado there. In that conversation, Diaz told Maldonado that she was not refusing to work at HSR but that she wanted some job security at HIMA because there was no more work left at HSR.[15]

We find that the General Counsel has presented a prima facie showing that Diaz' union activities were a motivating factor in the Respondents' decision not to hire her at HIMA and that the Respondents have failed to meet their *Wright Line* burden. The Respondents were aware that Diaz was an active union supporter, and they harbored a strong animus towards union activities. Veintidos knew that Diaz was seeking work at HIMA. Diaz wanted a medical-records-technician position for which she was apparently well qualified in light of her long tenure at HSR. Contrary to the judge's findings, Veintidos testified that she did not employ Diaz at HIMA based on an assumption that Diaz had a job at HSR. Veintidos, however, offered no explanation as to (1) why employment at HSR made Diaz, and not others, ineligible for work at HIMA and (2) how Diaz could be still working at HSR in April 1989 many months after the closing of HSR and its medical records department. Under these circumstances, we find that a violation of Section 8(a)(3) and (1) was established under the *Wright Line* test. Accordingly, we conclude that the Respondents unlawfully denied employment to Diaz as alleged by the General Counsel.

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusions of Law 7, 10, 12, and 13 of the judge's decision.

''7. By failing and refusing to bargain collectively and in good faith with the Union from about July 29, 1987, to November 14, 1988, and by violating the terms of a settlement agreement entered into on May

[13] Cf. *New York Telephone*, 300 NLRB 894 (1990), enfd. mem. 940 F.2d 648 (2d Cir. 1991). In that case, the Board found that the employer had not unlawfully refused to rehire an employee who had voluntarily resigned 2 years earlier. The employer considered the employee ineligible for rehire because of his poor attitude displayed, inter alia, on the job and by certain statements made in his resignation letter. In finding no intent to discriminate against the employee on the part of the employer, the Board took into account that the employee's prior voluntary resignation had provided the employer with an opportunity to reevaluate him notwithstanding the fact that his poor work attitude had been previously tolerated by the employer prior to his resignation and that the employer relied, in part, on the statements in his resignation letter.

[14] Maldonado did not testify at the hearing.

[15] The judge inferred that Maldonado had been confused by her conversations with Diaz. We find any such confusion irrelevant because Veintidos did not testify that she considered any of these matters in rejecting Diaz for employment at HIMA.

19, 1988, Hospital San Rafael, Inc. and Centro Medico del Turabo, Inc., as a single employer and alter egos of each other, violated Section 8(a)(5) and (1) of the Act.

''10. By unilaterally and without notification to or consultation with the Union changing wages, hours, and conditions of employment of employees in the units described below, Centro Medico del Turabo, Inc., as the alter ego of Hospital San Rafael, Inc., violated Section 8(a)(1), (3), and (5) of the Act.

''12. By refusing to rehire or to continue to employ Milton Suarez, Carmen Merced, Isabel Arriaga, Norma Flores, and Delia Diaz, Centro Medico del Turabo, Inc. violated Section 8(a)(3) and (1) of the Act.

''13. By failing and refusing to bargain in good faith with the Union as the representative of its employees in both units A and B, described above, on and after August 8, 1989, and until October 20, 1989, Centro Medico del Turabo, Inc. violated Section 8(a)(5) and (1) of the Act.''

Delete Conclusions of Law 4 and 9 of the judge's decision and renumber the subsequent paragraphs.

THE REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

Specifically, in view of our findings of single employer and alter ego status, we shall order the Respondents to bargain in good faith with the Union concerning the wages, hours, and other terms and conditions of employment for unit employees in units A and B and embody the terms of any such agreement reached with the Union in a signed written document. The Respondents shall also maintain in full force and effect the 1984–1987 collective-bargaining agreement with the Union. However, we shall not require the Respondents to rescind any changes in terms and conditions of employment, although previously made unilaterally, that are beneficial to unit employees, except on request by the Union. We also shall order the Respondents to make unit employees whole for any losses incurred because of the Respondents' unlawful unilateral changes or because of the Respondents' failure to abide by the 1984–1987 agreement as prescibed in *Ogle Protection Service*, 183 NLRB 682 (1970), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

We also shall order the Respondents to offer to Milton Suarez, Carmen Merced, Isabel Arriaga, Norma Flores, and Delia Diaz immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed. The Respondents are further required to make each of these individuals whole for any loss of earnings incurred by reason of the Respondents' discrimination against them, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, supra. We shall also require the Respondents to expunge from their files any reference to their failure to rehire or employ Suarez, Merced, Arriaga, Flores, and Diaz, and to notify them in writing that this has been done and that evidence of this unlawful conduct will not be used as a basis for future personnel actions against them. See *Sterling Sugars*, 261 NLRB 472 (1982).

Because of the serious nature of the violations and the Respondents' egregious misconduct, demonstrating a general disregard for the employees' fundamental rights, we find it appropriate to issue a broad order, requiring the Respondents to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979).

ORDER

The National Labor Relations Board orders that the Respondents, San Rafael Hospital, Inc. and Centro Medico del Turabo, Inc. and its subsidiaries, Turabo Medical Center Limited Partnership and Hospital Interamericano de Medicina Avanzada, Caguas, Puerto Rico, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition of Union Nacional de Trabajadores de la Salud, 1199, affiliated with National Union of Hospital and Health Care Employees, AFL–CIO, as the exclusive representative of their employees in units A and B described below.

(b) Failing and refusing to recognize and bargain collectively with the Union as the exclusive representative of their employees in units A and B.

(c) Failing and refusing to abide by the 1984–1987 collective-bargaining agreement applicable to the employees in units A and B.

(d) Unilaterally changing the wages, hours, and working conditions of their unit employees without prior notice to the Union and without first affording the Union an opportunity to meet and bargain concerning such matters.

(e) Failing and refusing to employ or recall for employment or otherwise discriminating against employees who support the Union.

(f) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union concerning the wages, hours, and other terms and conditions of employment for the employees in the following appropriate units and, if an agreement is reached, embody the terms of the agreement in a signed written document:

Unit A
Included: All registered nurses and pharmacists employed by the Respondents at their hospital located in Caguas, Puerto Rico.

Excluded: All other employees, office clerical employees, guards and supervisors as defined in the Act.

Unit B
Included: All licensed practical nurses and technicians employed by the Respondents at their hospital located at Caguas, Puerto Rico, including escorts; EKG technicians; Respiratory Therapy technicians; X-Ray technicians; Operating Room Technicians; Dietary Technicians; Medical Records Technicians; Admission Clerks; Record Room Clerks; X-Ray Clerks; Diet Department Clerks; Respiratory Therapy Clerks; Pharmacy Clerks; Operating Room Clerks; Emergency Room Clerks; Ward Clerks; and Pharmacy Auxiliaries.

Excluded: All other employees, office clerical employees, professional personnel, guards and supervisors as defined in the Act.

(b) Maintain in full force and effect the 1984–1987 collective-bargaining agreement applicable to both units A and B; however, adhere to any changes in wages, benefits, or other terms and conditions of employment for unit employees which were unilaterally instituted, but are superior to those set forth in the agreements, except on request by the Union.

(c) Make unit employees whole for any losses that they may have suffered because of any unilateral changes in wages, hours, and working conditions or because of the Respondents' failure to abide by the 1984–1987 collective-bargaining agreement with the Union, in the manner set forth in the remedy section of this decision.

(d) Offer to Milton Suarez, Carmen Merced, Isabel Arriaga, Norma Flores, and Delia Diaz immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed, and make each of them whole for any loss of earnings that they may have suffered by reason of the discrimination against them, in the manner set forth in the remedy section of this decision.

(e) Remove from its files any references to the unlawful refusals to rehire or employ Milton Suarez, Carmen Merced, Isabel Arriaga, Norma Flores, and Delia Diaz and notify each of them in writing that this has been done and that the refusals to rehire or employ will not be used against them in any way.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at their facility in Caguas, Puerto Rico, copies of the attached notice marked ''Appendix.''[16] Copies of the notice, in both English and Spanish, on forms provided by the Regional Director for Region 24, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents has taken to comply.

MEMBER OVIATT, concurring in part and dissenting in part.

In finding that the settlement agreements of May 19, 1988, should be set aside, the judge reasoned that HSR's settlement with the Union *necessarily* included a committment to bargain on behalf of CMT as to who would be the named Employer, as well as coverage, etc., and that by declining to include CMT, HSR showed it never had any intention of bargaining in good faith. I disagree.

In my view, the judge's conclusion that the settlement agreements ''necessarily included'' the committments he projected is simply incorrect. In view of the Union's entirely separate agreements with HSR and CMT, the differing provisions of those agreements, and that CMT was not even to open until several months later, it seems to me that the settlements cannot logically be construed as the judge hypothesized.

Accordingly, I would not set aside the May 1988 settlement agreements.

I agree, however, with the judge's alternate successorship findings, and I concur with my colleagues in the other violations found.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT withdraw recognition of Union Nacional de Trabajadores de la Salud, 1199, affiliated with National Union of Hospital and Health Care Employees, AFL–CIO, as the exclusive representative of our employees in units A and B described below.

WE WILL NOT fail and refuse to recognize and bargain collectively with the Union as the exclusive representative of our employees in units A and B.

WE WILL NOT fail and refuse to abide by the 1984–1987 collective-bargaining agreement applicable to our employees in units A and B.

WE WILL NOT unilaterally change the wages, hours, and working conditions of our unit employees without prior notice to the Union and without first affording the Union an opportunity to meet and bargain concerning such matters.

WE WILL NOT fail and refuse to employ or recall for employment or otherwise discriminate against employees who support the Union.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union concerning the wages, hours, and other terms and conditions of employment for the employees in the following appropriate units and, if an agreement is reached, embody the terms of such agreement in a signed written document:

Unit A

Included: All registered nurses and pharmacists employed by the Respondents at their hospital located in Caguas, Puerto Rico.

Excluded: All other employees, office clerical employees, guards and supervisors as defined in the Act.

Unit B

Included: All licensed practical nurses and technicians employed by the Respondents at their hospital located at Caguas, Puerto Rico, including escorts; EKG technicians; Respiratory Therapy technicians; X-Ray technicians; Operating Room Technicians; Dietary Technicians; Medical Records Technicians; Admission Clerks; Record Room Clerks; X-Ray Clerks; Diet Department Clerks; Respiratory Therapy Clerks; Pharmacy Clerks; Operating Room Clerks; Emergency Room Clerks; Ward Clerks; and Pharmacy Auxiliaries.

Excluded: All other employees, office clerical employees, professional personnel, guards and supervisors as defined in the Act.

WE WILL maintain in full force and effect the 1984–1987 collective-bargaining agreement applicable to both units A and B; however, WE WILL adhere to any changes in wages, benefits, or other terms and conditions of employment for unit employees which were unilaterally instituted, but are superior to those set forth in the agreement, except on request by the Union.

WE WILL make unit employees whole for any losses that they may have suffered because of any unilateral changes in wages, hours, and working conditions or because of our failure to abide by the 1984–1987 collective-bargaining agreement with the Union.

WE WILL offer to Milton Suarez, Carmen Merced, Isabel Arriaga, Norma Flores, and Delia Diaz immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other right or privilege previously enjoyed, and

WE WILL make each of them whole for any loss of earnings that they may have suffered by reason of our discrimination against them, with interest.

WE WILL remove from our files any references to our unlawful refusals to rehire or employ Milton Suarez, Carmen Merced, Isabel Arriaga, Norma Flores, and Delia Diaz and notify each of them in writing that this has been done and that the refusals to rehire or employ will not be used against them in any way.

HOSPITAL SAN RAFAEL, INC. CENTRO MEDICO DEL TURABO, INC. AND ITS SUBSIDIARIES, TURABO MEDICAL CENTER LIMITED PARTNERSHIP AND HOSPITAL INTERAMERICANO DE MEDICINA AVANZADA

Raymond E. Morales, Esq., Efraim Rivera Vega, Esq., and *Mori Pam Rubin, Esq*., for the General Counsel.

Godwin Aldarondo Girard, Esq., of Hato Rey, Puerto Rico, for Respondent Hospital San Rafael, Inc.

Herber E. Lugo Rigau, Esq. (Ledesma, Palou and Miranda),[1] of Hato Rey, Puerto Rico, for Respondents Centro Medico

del Turabo, Joaquin Rodriquez, Turabo Medical Center and Hospital Interamericano de Medicina Avanzada.

Sr. Luis Alvarez Colon, of Caguas, Puerto Rico, and *Jorge Farinacci, Esq*., of Hato Rey, Puerto Rico, for the Charging Party.

DECISION

GEORGE F. MCINERNY, Administrative Law Judge. This matter began with the filing of a charge by Union Nacional de Trabajadores de la Salud, 1199 (the Union), on September 21, 1987, alleging that Hospital San Rafael, Inc. (HSR), or together with other employers named later, as Respondent, had violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). This charge, Case 24–CA–5646, was amended on October 7, 1987, and further amended on November 30, 1987, to include as Respondents San Rafael Planning, Inc. (SRP) and Centro Medico del Turabo, Inc. (CMT).

Additional charges were filed by the Union against HSR on October 28, 1987, in Case 24–CA–5675, amended on November 30, 1987, to include SRP and CMT as Party Respondents. Also on November 30 the Regional Director for the Region 24 of the National Labor Relations Board (the Regional Director, and the Board), issued a complaint and order consolidating cases in Cases 24–CA–5646 and 24–CA–5675 alleging that HSR, SRP, and CMT are alter egos of each other, and a single employer, within the meaning of the Act; that these Employers, the Respondent had refused to bargain in good faith with the Union as the certified collective-bargaining representative of certain of its employees in two appropriate bargaining units; that the Respondent had failed to allow access to its premises to union representatives; and had refused to apply the terms of a collective-bargaining agreement to a number of employees who were entitled to be covered by that agreement.

Another charge was filed by the Union on November 30, 1987, in Case 24–CA–5697 alleging further instances of unlawful refusal to bargain, and on January 12, 1988, the Union filed a charge in Case 24–CA–5722, containing still more allegations of unlawful unilateral actions. This last charge was amended on February 12, 1988.

On February 26, 1988, the Regional Director issued a new order consolidating Cases 24–CA–5646, 24–CA–5675, 24–CA–5697, and 24–CA–5722 and a consolidated complaint alleging the alter ego status of Respondent and a number of instances of refusal to bargain, unilateral actions, and harassment of union agents, as unfair labor practices.

A new charge containing the same type of allegations was filed by the Union on March 28, 1988, against the same Respondents, and amended on April 20, 1988. On April 21, the Regional Director issued a separate complaint in Case 24–CA–5765, alleging the alter ego status of the Respondents; failure to continue in force the terms of a collective-bargaining agreement, refusing to discuss grievances, and the imposition of new and different benefits without consulting the Union. Also on April 21, the Regional Director ordered this case consolidated with the other four for hearing.

The complaints in Case 24–CA–5765 and in Cases 24–CA–5646, 24–CA–5675, 24–CA–5697, and 24–CA–5722 were amended by separate documents on April 29, 1988, primarily to include the name of another Respondent, Turabo Medical Center Limited Partnership (TMCLP) as a Party Respondent and alter ego, along with HSR, SRP, and CMT.[2]

It was in this procedural status that the matter came before me for hearing on May 17, 1988, at Hato Rey, Puerto Rico. After some preliminary activity on the record, including the filing of formal papers, an opening statement by the General Counsel, and the allowance of a motion by the General Counsel to further amend the complaints, the parties began to discuss an informal settlement of the issues. These discussions continued until the afternoon of May 19 when the parties finally agreed on settlement of the issues in the case through two non-Board agreements, one between the Union and HSR, and the second between the Union, CMT, and TMCLP. The written settlement documents were received into evidence, whereupon the Union withdrew all the charges it had filed in these cases, and the General Counsel withdraw the complaints herein. I accepted the withdrawal of the charges, and granted the motion to withdrew the complaint.[3] The hearing was then closed.

The situation was not settled, however, and on October 18, 1988, the Union filed with me an ''Urgent Petition Requesting Order Vacating Non Board Settlement Agreement.'' This document alleged that HSR had violated several sections of the May 19 settlement agreement and requested that the charges against HSR be reinstated.

In addition, further charges were filed by the Union against HSR and CMT on December 2, 1988, in Case 24–CA–5886, amended on December 13 to include TMC as a Party Respondent and further amended on February 17, 1989, and alleging refusals to bargain, and on December 13 in Case 24–CA–5889, alleging that TMC doing business as Hospital Interamericano de Medicina Avanzada (HIMA) had refused to hire certain individuals because of their union activities. This charge was amended on February 17, 1989.

Based on the charges in Cases 24–CA–5886 and 24–CA–5889, the Regional Director issued a consolidated complaint on February 28, 1989, alleging that HSR, CMT, and Joaquin Rodriguez, d/b/a TMC d/b/a HIMA had violated Section 8(a)(1), (3), and (5) of the Act.[4] The issuance of this new complaint was followed on March 6, 1989, by a motion by the General Counsel in Cases 24–CA–5646, 24–CA–5675, 24–CA–5697, 24–CA–5722, and 24–CA–5765. After recapitulating the history of the settlement negotiations and agreement; the Union's urgent request of October 18, 1988; the charges and amendments in Cases 24–CA–5886 and 24–

[1] Lugo was associated with the firm of *Lespier and Munoz Noya*, of San Juan, Puerto Rico, until October 13, 1989, when he joined the firm of Lelesma, Palou & Miranda. Associated with Lugo up to October 13, 1989, in this matter was *Raquel M. Dulzaides, Esq*., of *Lespier and Munoz Noya*.

[2] All of these complaints and amendments were duly answered by counsel for HSR and SRP, and counsel for CMT and TMC, who denied the commission of any unfair labor practices, and denied further that these two groups of employers were alter egos of each other, or a single employer for purposes of the Act.

[3] As requested by the General Counsel these actions were conditioned upon compliance by the parties with the terms and conditions of the settlement agreements.

[4] This complaint was amended, for technical reasons, on April 5, 1989, and to include additional explanatory material, on April 19, 1989.

CA–5889; and the consolidated complaint in these latter two cases, the General Counsel alleged that some of the provisions of the May 19, 1988 settlement agreement between the Union and HSR were also violated. The General Counsel stated that ''the unremedied portions of the charges and of the previously issued amended consolidated complaint (of February 26, 1988) should be reinstated and the unremedied portions of the non-Board settlement should be set aside.[5]

Specifically, the General Counsel argued that those portions of the charges in Cases 24–CA–5646 and 24–CA–5722, dealing with the alleged conditioning of bargaining by HSR on the deletion from the Union's proposals of references to CMT, and the withdrawal of recognition of the Union by HSR, should be reinstated. The remaining allegations in Cases 24–CA–5646 and 24–CA–5727, as well as all the allegations in Cases 24–CA–5675, 24–CA–5697, and 24–CA–5765 were specifically not included in the General Counsel's motion.

The General Counsel also moved to reinstate the amended consolidated complaint in Cases 24–CA–5646, 24–CA–5675, 24–CA–5697, and 24–CA–5722, stating that he would move to amend this reinstated complaint to delete any alleged violations which were remedied by the settlement agreements.[6]

Finally, the General Counsel moved to consolidate the reinstated complaint with the new complaint, issued on February 26, 1989, in Cases 24–CA–5886 and 24–CA–5889 in order to try all of the cases, still living, at a single hearing.

All of these matters having been referred to me, and in light of a trial date set for May 30, 1989, and without taking any testimony and documentary evidence on the merits of the numerous allegations presented here, I did not feel that I was able to distinguish between those areas of the complaints and charges (involved in the settlement agreement) which were to be reinstated and which were not. Accordingly, on May 4, I issued an order explaining in more detail what I have just said here, and ordering that the May 19, 1988 settlement agreements be set aside, that the amended consolidated complaint in Cases 24–CA–5646, 24–CA–5675, 24–CA–5697, 24–CA–5722, and 24–CA–5765 be reinstated and consolidated with the complaint in Cases 24–CA–5886 and 24–CA–5889 for trial, beginning on May 30, 1989.

During the course of the hearing new charges were filed in Cases 24–CA–5949 on May 3, 1989, and 24–CA–6030 on October 6, 1989. A motion to further amend the amended consolidated complaint and to consolidate Case 24–CA–5949 with the prior cases herein, was presented by the General Counsel on July 10, 1989. This motion was allowed, adding Norma Flores and Delia Diaz to the names of alleged discriminatees, and the new Case 24–CA–5949, to the caption.

Two collateral proceedings came on to decision during the summer of 1989, both of which had some effect on the course of this hearing, and on the actions of the parties involved here. First, on June 16, Hospital San Rafael, which by this time had closed its doors to patients and was winding down its affairs, filed a Petition under Chapter 11 of the Bankruptcy code (in Bankruptcy, No. 89-02549, Ch. 11, United States Bankruptcy Court, District of Puerto Rico). On July 14, HSR, by its attorneys, filed a motion with the Bankruptcy Court for an order enjoining this Board from continuing to process the instant matter. On July 20 the Bankruptcy Court (Enrique S. Lamoutte, J.) denied this motion. Thereafter, nothing further was heard of the bankruptcy matter in this proceeding.

The second matter impinging on the instant case was an order in a petition for an injunction filed by the Regional Director for Region 24 in the United States District Court for the District of Puerto Rico, Civil 89-0490CC, under Section 10(j) of the Act (29 U.S.C. § 160j) against CMT and Joaquin Rodriguez, d/b/a TMCLP d/b/a HIMA. The subject matter of this 10(j) action reflected some of the issues which were before me at that time.

After discussing the issues in a comprehensive and scholarly opinion issued on August 8, 1989, the Court (Carmen Consuelo Cerezo, J.) ordered the Respondents to refrain from recognizing and bargaining with the Union (Union Nacional de Trabajodores de la Salud, 1199, a/w National Union of Hospital and Health Care Employees, AFL–CIO) as the representative of its licensed practical nurses and technicians, and from refusing to offer employment to individuals because of their activities on behalf of the Union. The court further ordered the Respondents to bargain in good faith with the Union, and to reinstate Milton Suarez to his former position.

On October 4, the General Counsel filed a motion to amend the existing amended consolidated complaint restating, as the General Counsel explained, those allegations in the prior amended consolidated complaint where he believed the Respondents were not in compliance with the May 19, 1988 settlement agreements, and to inform the parties which allegations the General Counsel is in fact litigating. This motion was allowed on October 16, 1989.

Finally, on October 6, 1989, the Union filed a new charge in Case 24–CA–6030, alleging that Respondents CMT and Joaquin Rodriguez d/b/a TMCLP d/b/a HIMA had violated Section 8(a)(1), (3), and (5) of the Act. This charge was amended on October 26, and again on December 12, 1989. As the result of these charges, a complaint issued on December 15, 1989, alleging a continued refusal to bargain in good faith from August 11, to October 10, 1989, had issued a written warning to Milton Suarez, and had threatened its employees because of their union activities. The General Counsel moved on December 19, 1989, to consolidated this case, Case 24–CA–6030 with the other cases heretofore mentioned, and to add as a Party Respondent, Caribe Hospital Affiliates, Inc. (CHA) which has contracted with Respondent CMT to operate the new hospital, HIMA.

The case came on to be heard on May 30, 1989, and continued at various dates until May 21, 1990.[7] At the hearing all parties were represented by counsel, and all had the opportunity to present testimony and documentary evidence, to examine and cross-examine witnesses, and to argues orally. After the hearing the Respondents and the General Counsel submitted briefs which have been carefully considered.

Based upon the entire record, including my observations of the witnesses, and their demeanor, I make the following

[5] Citing *Norris Concrete Materials*, 282 NLRB 289 (1986).

[6] The General Counsel stated that since the allegations in the complaint in Case 24–X–5765 were substantially remedied by the settlements, he would not move to reinstate that complaint.

[7] Including hearing dates made necessary by the filing of new charges and a lost portion of the transcript.

FINDINGS OF FACT

I. JURISDICTION

A. Hospital San Rafael closed on November 14, 1988. Before that date, and during periods covered by the allegations, HSR maintained and operated a general hospital in the city of Caguas, Puerto Rico. In the normal course of its business, HSR annually derived gross revenues in excess of $250,000 and purchases and received goods and services valued in excess of $50,000 directly from points located outside the Commonwealth of Puerto Rico. These facts were admitted in answers filed by HSR to the original complaint in Cases 24–CA–5646 and 24–CA–5675 which issued on November 30, 1987, and to subsequent amendments and consolidations to this complaint, up to February 1989, when, after HSR had closed, it denied, in its answer to a complaint dated February 28, 1989, that it was an employer engaged in commerce. There was no denial, however, that during the times when it was alleged that HSR committed unfair labor practices HSR was subject to the Board's jurisdiction.[8]

I find that HSR is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

B. San Rafael Planning (SRP) was named as a Party Respondent in the original complaint in Cases 24–CA–5646 and 24–CA–5675, but its name was dropped from the caption by the time the complaint issued in Cases 24–CA–5886 and 24–CA–5889 in February 1989. Both HSR and CMT have denied that SRP was an employer in commerce within the meaning of the Act.

I note that the original complaint in Cases 24–CA–5646 and 24–CA–5675, issued on November 30, 1987, does not allege that SRP is an employer engaged in commerce, but only that it is a corporation duly organized under, and existing by virtue of, the laws of the Commonwealth of Puerto Rico; that it had its office and place of business in the city of Caguas, and that it was engaged in the operation of Hospital San Rafael.

The undisputed evidence shows that these allegations were and are accurate. SRP is a Puerto Rico corporation and was during all times material here the owner of approximately 87 percent of the stock of HSR. SRP had no employees, and conducted no other business or trade during times material here. The evidence, rather, indicates that at least after the formation of Centro Medico del Turabo in 1978 or 1979, SRP took no part in the management of SRH, or in the activities which led to the development and construction of HIMA.

I find that SRP is the parent company of HSR, and, in fact, was doing business as HSR during all times relevant to the issues in this case.

C. Centro Medico del Turabo, like San Rafael Planning, is basically a holding company rather than itself an employer. Indeed, the uncontradicted evidence shows that CMT was organized by the shareholders of SRP to plan and eventually to build a hospital to replace HSR. Like SRP, CMT had no employees, but unlike SRP, it had a full complement of officers and directors. CMT also was and is the general partner in Turabo Medical Center, a Limited Partnership organized in 1980 under the laws of the State of Delaware. While both HSR and CMT in their answers to early formal documents in this matter denied that CMT was an employer engaged in commerce within the meaning of the Act, the most recent answer by CMT, to the consolidated complaint issued on February 28, 1989, in Cases 24–CA–5886 and 24–CA–5889, admitted that CMT was an employer so engaged, under Section 2(2), (6), and (7) of the Act.

I find that CMT is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

D. Turabo Medical Center Limited Partnership was established by CMT in 1980 to act as the operating arm of CMT in the planning, financing, and construction of a new hospital, and to operate that hospital when it was built and open for business. CMT was and is the general partner, and, for a number of reasons, including revisions of United States tax laws, the plan for sale of limited partnerships did not go through, leaving only one limited partner, Joaquin Rodriguez, up to the time of this hearing. In its answer to the February 28, 1989 complaint, mentioned above, CMT did not deny that TMCLP was as described here, a Delaware Limited Partnership, and that it does operate a hospital, Hospital Interamericano de Medicina Avanzada (Interamerican Hospital for Advance Medicine or HIMA), has a usual place of business in Caguas, Puerto Rico, and HIMA is anticipated to derive gross revenues in excess of $250,000, and to receive goods valued at over $50,000 directly from points outside the Commonwealth of Puerto Rico.

I find that CMT was and is doing business as TMCLP, which in turn is doing business as HIMA, the combined entity constituting an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[9]

E. Caribe Hospital Affiliates, Inc. (CHA) according to the credible and undenied testimony of Carlos M. Pineiro Crespo, who was administrator of HIMA from October 1988 to September 30, 1989, was hired under a contract with TMCLP to manage the day-to-day operations of HIMA.

CHA is a Puerto Rican corporation which has its headquarters at Bayamon, Puerto Rico, and operates at various hospitals and other locations in Puerto Rico and in the Virgin Islands. The Company was notified of this hearing but failed to appear or answer allegations that it is an employer engaged in commerce, an agent of, and a joint employer with TMCLP. While the complaint in Case 24–CA–6030 alleged that CHA is an employer engaged in commerce, there are no allegations in the complaint specifying amounts of business or interstate transport of goods, supplies, and materials purchased by CHA. The management agreement between CHA and TMCLP provides for a management fee of at least $8000 and up to $35,000 per month together with unspecified costs of salaries and fringe benefits for an executive director, an assistant, and a chief financial officer, together with all necessary expenses. In view of the size of this hospital, I think

[8] Several of the answers filed on behalf of Centro Medico del Turabo (CMT) and CMT with Juaquin Rodriguez, as partners in Turabo Medical Center, a Limited Partnership (TMCLP) d/b/a Hospital Interamericano de Medicina Avanzada (HIMA) denied that HSR was engaged in commerce within the meaning of the Act. I find that these responses are disingenuous as well as frivolous, and they are striken from those answers.

[9] As in the case of HSR, I find that the answers to several of the complaints here, denying that CMT, or TMCLP were or are engaged in commerce, are disingenuous as well as frivolous and those denials are stricken.

it can be fairly inferred that CHA, which also has a number of similar agreements both in Puerto Rico and the Virgin Islands, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I further note that CHA was not involved in any of the alleged unfair labor practices here, but the contract between it and TMCLP shows that it is the agent of, and a joint employer with CMT and its subsidiaries.

II. THE LABOR ORGANIZATION INVOLVED

The various complaints allege, the answers admit, and I find that Union Nacional de Trabajadores de la Salud, 1199, a/w National Union of Hospital and Health Care Employees, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Settlement Agreements*

As I have described above in the narration of procedures in this matter, the parties reached settlements of the issues set out in the complaints in Cases 24–CA–5646, 24–CA–5675, 24–CA–5697, 24–CA–5722, and 24–CA–5765 on May 19, 1988. There were two settlements, the first of which, between HSR and the Union, provided that ''It is understood by the parties that this agreement is entered into by HSR in order to avoid protracted, lengthy and costly litigation and does not constitute nor may it be so construed, an admission by HSR of having violated any applicable laws.''

The agreement stated that HSR recognized the Union as the exclusive representative of its employees in the units certified by the Board; that HSR and the Union agreed to continue negotiating in good faith; that HSR would continue to honor the terms of the parties' collective-bargaining agreement; that HSR would pay $2620 to the Union for uncollected dues no later than May 23, 1988; that certain named employees were included within the bargaining units, and that certain other named employees were not; that the parties would continue to process grievances, and that the parties would negotiate the terms and conditions of the part-time employees in the bargaining units; that HSR would compensate with retroactive pay and benefits the employees newly included in the bargaining units; and in consideration of all of this, the Union agreed, conditionally, to withdraw the charges in Cases 24–CA–5646, 24–CA–5675, 24–CA–5697, 24–CA–5722, and 24–CA–5765.

This agreement was signed by Luis Alvarez Colon for the Union, and by Carlos M. Pineiro, executive vice president, and Eladio Cartagena, corporate counsel, for the Company.

The concurrent agreement between CMT, TMCLP, and the Union contained the same statement that the agreement was entered into by CMT and TMCLP ''in order to avoid protracted, lengthy and costly litigation'' and did not constitute an admission by either Respondent that it had violated any law, nor a recognition of any labor organization as representative of employees of CMT or TMCLP.

Specifically, the agreement stated that CMT and TMCLP made a commitment to employ, at HIMA, a minimum of 95 percent of the employees employed by HSR at the time that HIMA was to begin its operations as a hospital; that all employees who are employed by HSR at the time HIMA begins its operations, and who are employed by HIMA will be deemed to have been hired on the first day of operation of HIMA; that all other employees hired by HIMA will be deemed to have been employed as of the second day of operations at HIMA, or later, depending on date of hire; and that CMT and TMC agree to hire and employ on a nondiscriminatory basis, and not to condition employment on membership or nonmembership in a labor organization.

In consideration of these undertakings, the Union agreed, conditionally, to withdraw the charges in Cases 24–CA–5696, 24–CA–5675, 24–CA–5697, 24–CA–5722, and 24–CA–5765.

This agreement was signed by Alvarez for the Union, and by Joaquin Rodriguez, as president on behalf of CMT and TMCLP.

As a result of these agreements, the General Counsel moved, on May 19, 1988, to withdraw the complaints theretofore issued with the understanding that ''upon non-compliance with the terms of these agreements the parties will—file a motion—for reinstatement of the charges'' and the complaints. I granted the motions to withdraw the charges and the complaints and the matter was closed.

After this the Union and HSR did sit down to negotiate, but the efforts of the parties to find a common ground foundered on the question of the inclusion of CMT—TMCLP as a Party Employer.[10] On September 14, 1988, HSR, acting through its attorney and chief negotiator, Godwin Aldarondo Girard, withdrew from the negotiations because of the Union's insistence on the inclusion of CMT in the preamble (or ''appearance'') clause. Aldarondo stated that there would be no discussion of any other articles until this preamble was straightened out; that there would be no inclusion of CMT, which was not a party to these negotiations, and that he was going to take the matter to the Board. There were no further discussions between HSR and the Union after September 14. Meanwhile, the time was drawing nigh for Hospital San Rafael to close and for the new Hospital Interamericano de Medicine Avanzada to open. These facts prompted the Union to have its Attorney (at this time Raul Santiago Melendez of the firm of Bufete, Periz Munoz and Santiago Melendez) to file an ''Urgent Petition Requesting Order Vacating non Board Settlement'' on October 18, 1988, requesting that the charges and complaints against HSR be reinstated, and that the hearing be reopened.[11]

While this motion was under study by the Board's Regional Office, two charges were filed by the Union on December 2 and 13, 1988, alleging new violations[12] of Section 8(a)(5) of the Act by HSR and CMT, and violations of Section 8(a)(1) and (3) by CMT. These charges were the subject matter of a new consolidated complaint dated February 28, 1989, alleging violations of Section 8(a)(5) by HSR and CMT and of Section 8(a)(3) by CMT.

On March 6, 1989, the General Counsel filed with me a motion asking that portions of the charges in Cases 24–CA–5646 and 24–CA–5722 which were not remedied by the set-

[10] These negotiations will be discussed at length below.

[11] CMT was mentioned in the caption to this motion, but there was no prayer in the motion to set aside the settlement agreement between the Union and CMT, or to reopen the hearing as to CMT. The record shows that as of October 18, HIMA had still not hired any employees, or opened its doors for business.

[12] These allegations were ''new'' in the sense that the actions complained of occurred after the date of the settlement agreements.

tlement agreements, be reinstated, and that the unremedied portions of the complaints in Cases 24–CA–5646, 24–CA–5675, 24–CA–5697, and 24–CA–5722 be reinstated. The General Counsel also moved to consolidate the reinstated consolidated complaint with the new consolidated complaint in Cases 24–CA–5886 and 24–CA–5889 in order to combine the whole matter for trial at a single hearing.

In ruling on these motions, I considered the difference between the positions of the Union and the General Counsel; the fact that at the time I was called upon to make the ruling I had not seen the positions of Respondents on the issues;[13] the fact that determinations of which parts of the old complaints should be reinstated and which should not would necessarily depend upon evidence to be adduced at the reopened hearing; and simple fairness to all parties. Having done all that, I ordered that the settlement agreements be set aside,[14] the prior complaints be reinstated, and that these complaints be consolidated with the new consolidated complaint in Cases 24–CA–5886 and 24–CA–5889 for purposes of hearing.

During the hearing, questions were raised by the General Counsel concerning my ruling insofar as it reinstated the original complaints in their entirety; and by Respondents is that my ruling set aside the settlement agreements themselves. Respondents argued, in effect, that by entering into the agreements, the Union had waived any arguments it may have advanced that HSR and CMT were a single employer, or alter egos and that the single employee issue was settled for all time by the settlement agreements. The General Counsel felt that I had gone too far in reinstating the original complaints, because most of the allegations in those complaints which were included in the settlement agreements had been remedied by the Respondents. What was left, after comparing what the Respondents did to live up to the settlements, was an alleged violation of the HSR agreement in that HSR continued to refuse to bargain in good faith by failing and refusing to bargain with the Union for a contract covering employees of CMT as well as those of HSR.[15] This alleged violation, of course, is dependent upon whether, as a matter of law, HSR and CMT are a single employer, or whether CMT is merely an alter ego, or a disguised continuance of HSR. The alleged violations of the CMT agreement concerned a provision therein that CMT would not discriminate in hiring on account of union membership, or concerted activity by prospective employees. Of course, CMT had no employees in May 1988, when the settlement agreement was executed. Its obligation to refrain from discrimination in hiring was prospective only, and its obligations under the Act as an employer were, at that time, dependent upon the existence of its single emplolyer, alter ego, relationship with HSR.

Since the issue of whether the Respondents had violated the terms of their settlement agreements turned upon the question of the relationship between them, I did not think it was appropriate for me to rule on the settlement issue until all parties had had the opportunity to present evidence bearing on the single employer–alter egos issue. My decision finding that HSR, CMT, and TMCLP are a singel employer and alter ego is set out below. Thus, it is appropriate now for me to decide the questions of violations of the settlement agreements.

In this case HSR and CMT had knowledge of their internal relationships, and knew, or should have known, of the legal effect of these internal relationships. They knew who owned the companies, who managed them, who controlled the companies' labor relations, and what was the interrelation of operations between them. If they knew these things, they knew, or should have known that they constituted a single employer and alter egos within the meaning of the Act. It follows that an agreement by HSR to bargain in good faith with the Union would necessarily include a commitment to bargain on behalf of CMT on the question of the preamble, i.e., who was to be named as an employer in the negotiations, and about coverage and the term of the collective-bargaining agreement under consideration.

By entering into the May 19, 1988 settlement agreement with the Union, and agreeing in that agreement to bargain in good faith, then by refusing, in September of that year, to bargain further because of the Union's insistence on the inclusion of CMT as a Party Employer, HSR has shown that it never had any intention of bargaining in good faith on that issue or of complying with that provision of the settlement agreement. The consistency between its conduct in 1987 which gave rise to the original charges of refusal to bargain, and in 1988 after the execution of the settlement agreement show that the Respondent HSR never had any intention of complying with the terms of the settlement agreement, arguing, rather, that the fact that the Union did not insist on including in the agreement a statement or admission that HSR and CMT were alter egos constituted a waiver of that position by the Union. I thus infer and find that HSR entered into the settlement agreement in bad faith and had no intent to comply with the agreement as it bound CMT and HSR as alter egos, *Norris Concrete Materials*, 282 NLRB 289 (1986); *Jordan Graphics*, 295 NLRB 1085 (1989). See also *Quinn Co*., 273 NLRB 795 (1984), and the Board's comments in *Auto Bus, Inc*., 293 NLRB 855 (1989).

I find that Respondent HSR has failed to comply with paragraphs 1, 2, and 3 of the May 19, 1988 settlement agreement. Those paragraphs of that agreement are rescinded, the underlying charges in Cases 24–CA–5646, 24–CA–5675, 24–CA–5697, 24–CA–5722, and 24–CA–5765 are reinstated insofar as they alleged a refusal to bargain collectively and in good faith with the Union; and the complaints in Cases 24–CA–5646, 24–CA–5675, 24–CA–5697, and 24–CA–5722 are reinstated insofar as those complaints alleges that Respondent HSR has failed and refused to bargain collectively and in good faith with the Union. *Davis Electrical Contractors*, 291 NLRB 115 (1988); *NLRB v. Northern California District Council of Hod Carriers*, 389 F.2d 7212 (9th Cir. 1968).

With regard to CMT, I note that the evidence in this case shows that while CMT was and is an alter ego with HSR and TMCLP, CMT employed no employees in the period before the signing of the May 19, 1988 settlement. CMT's promises to hire 95 percent of the employees from the HSR bargaining unit for new positions at HIMA, and its undertak-

[13] Indeed, counsel for CMT had not received a copy of the Union's motion at all, and had submitted no position before the hearing reopened on May 30, 1989.

[14] Subject to reconsideration after the receipt of all material evidence submitted by the parties.

[15] Neither the General Counsel nor the Respondents introduced any evidence on those issues in the original complaints where there had been compliance with the settlement agreements.

ing to guarantee preference in seniority at HIMA to those employees were prospective, and were carried out. The promise by CMT to refrain from discrimination against new hires was also prospective in nature and, indeed, was no more than CMT was obliged under the law to do and to refrain from doing. CMT did not, as the evidence here shows, live up to this last promise, but whatever discrimination did occur was the subject matter of the charges and complaints in Cases 24–CA–5886, 24–CA–5889, and 24–CA–6030. Since CMT did not promise in the settlement to bargain in good faith, and since there were no allegations in the prior complaints specifically alleging discrimination against individuals. I see no useful purpose to be served by setting aside the settlement agreement between CMT and the Union. The remedy I have recommended below will adequately address the violations found as the result of allegations in the new, postsettlement, complaints.

B. *The Companies Involved*

1. Hospital San Rafael

The hospital was established, apparently in 1933, as an institution privately owned by a group of physicians. Some time around 1978 the equity in the hospital was purchased by two individuals, Dr. Jaime A. Soler Zapata and Dr. Jose A. Badillo Quinones.[16] Soler and Badillo took title to the hospital through a holding company, San Rafael Planning, of which Dr. Soler owned 70 percent and Dr. Badileo 30 percent of San Rafael Planning, in turn, owned about 87 percent of the shares of Hospital San Rafael, with the remainder divided up among a number of other physicians.

Joaquin Rodriguez did not recall much about SRP, except that he was its president from about 1978 onward. There were no other offices or directors as far as he knew. He himself was never a shareholder, and the Company acted merely as a holding operation for the HSR stock which it owned.

In the period 1982 through 1988, Drs. Soler and Badillo continued to own 100 percent of the stock of SRP, which in turn owned about 87 percent of the stock of HSR. In this same period the Directors of HSR were:

Dr. Jaime Soler Zapata, Chairman
Dr. Jose A. Badillo Quinones, Secretary-Treasurer
Joaquin Rodriguez, Director

In this same time period the officers of HSR were:

Joaquin Rodriguez, President—January 1982–November 1988
Enique Baguero, Administrator—January to June, 1982
Sonia Neives Arnau, Comptroler—January–May 1982
—Vice President May 1982–February 1985
Simon Irizarry, Director, Auxiliary Services—January–March 1982
Fernando Rodriguez, Vice President—Operations 1982–1988
Luis Baiz, Vice President, Auxiliary Services—April 1982–1988
Maria T. Dominguez, Administrater—July 1982–1988
Carlos M. Pineiro, Vice President, Finance—October 1984–July 1985
Executive Vice-President—July 1985–1988
Irma Belavel, Comptroller—May 1987–1988
Cyril Olivierre, Vice President, Finance—January 1987–1988

2. Centro Medico del Turabo

Centro Medico del Turabo was established on August 30, 1978. At the beginning the principal shareholders of CMT were Dr. Soler, with 40 percent, Dr. Badillo with 20 percent, and Joaquin Rodriguez with 20 percent. Later, these amounts were reduced because of financial needs. As of May 16, 1988, Dr. Soler still held 37.8754 percent of the shares which had been issued, Dr. Badillo, Rodriguez, and Carlos Pineiro[17] each held 18.9377 percent of the issued shares, a total of almost 95 percent of the outstanding shares. There was, in May 1988, an agreement between these shareholders and Kidder Peabody and Co. for the issuance of a number of additional shares which, if implemented, would have reduced the percentage of ownership in the four named shareholders to what I compute to be about 71 percent. Rodriguez testified that, although a prospectus was prepared for the sale of these additional shares, they never were sold, the percentages of ownership remained the same down to the time of this hearing in the summer of 1989.

During the times covered by the complaints in this case, the directors of CMT were:

Joaquin Rodriguez, Chairman
Dr. Jaime A. Soler Zapata, Vice Chairman
Dr. Jose A. Badillo Quinones, Director
Carlos M. Pineiro Crespo, Director

Sometime later, Rodriguez was not sure of the dates, two additional directors were appointed, Rene Santos and Juan A. Chavez Abreu. Another directorship, to be filled by a member of the staff of the new hospital was also to be appointed, but this had not been done at the time of the hearing.[18]

The officers of CMT during the times material here were:

Joaquin Rodriguez, President
Carlos Pineiro, Executive Vice President and Treasurer
Jose A. Badillo, Secretary
Belinda Badillo, Assistant Secretary
Jose J. Vargas Cordero M.D., Vice President, Medical

[16] The findings in this section are taken from the uncontradicted testimony of Joaquin Rodriguez Garcia, and from documents produced by the Respondents under subpoena. I cannot say that I am convinced that Rodriguez was entirely credible in his testimony here, but in this area, at least, I have no problems with his candor and his memory.

[17] Pineiro received his shares as the result of a longstanding arrangement between himself and Rodriguez to share equally in all their endeavors. There is no evidence of this in the record beyond Rodriguez' own statement, but it is of no consequence to the events in this case.

[18] One Jorge M. Azize also served as a director between July 1987 and January 1989.

Maria T. Dominguez, Vice President, Patient Services

Fernando A. Rodriguez, Vice President, Support Services

3. Turabo Medical Center Limited Partnership

Turabo Medical Center Limited Partnership was formed on June 10, 1980, under the laws of the State of Delaware. The general partner in this partnership is CMT and the sole limited partner is Joaguin Rodriguez.[19] There have been no changes in the make up of the partnership since its formation. It does, of course, operate the new hospital under the name and style of Hospital Interamericano de Medicina Avanzada.

4. The relationship between the companies

a. *Background*

When HSR was brought by Drs. Soler and Badillo in 1978 they found a serious financial situation. An audit showed that the hospital was losing money and was in danger of going into bankruptcy. The Doctors then called in Joaquin Rodriguez as a financial consultant.[20] When he became aware of the depth of the financial hole they were in, he wanted to resign, but was dissuaded with an offer to become the manager of the hospital. At this time it is not entirely clear, but I infer and find that Rodriguez became the President of HSR, and probably of SRP at the same time.

The hospital's money problems became further complicated when, about 6 months after Rodriquez took over, a Medicare inspection determined that the hospital did not comply with Medicare requirements, mainly because of an antiquated physical plant. The hospital was housed in five different buildings which had been combined. One of these buildings had been a supermarket, another a hotel. There were serious problems with the width of corridors, elevators, wiring, and what Rodriguez described as ''a long list'' of physical deficiencies. If the hospital failed to remedy these deficiencies, it would no longer be eligible to receive payments for treatment of Medicare patients, who, at that time, represented 44 percent of the occupants of the hospital.

The physical requirements imposed under Medicare rules would, according to Rodriguez, have made it necessary to tear down the whole place and rebuild from scratch. The management of HSR, accordingly, made a determination to build an entirely new facility. This decision apparently was made in 1978, and the initial planning was done by HSR itself, with the idea of continuing the same corporate entity into a new structure as Hospital San Rafael.[21]

By January or February 1981, Rodriquez testified that he felt he was doing all the work in the planning for the new hospital (as well as managing the existing hospital); the doctors (resumably Soler and Badillo) were not putting any money into the planning endeavors; and there was no money available from HSR to meet planning expenses. In these discouraging circumstances, somewhat surprisingly, Rodriguez decided that he wanted an ownership interest in the new hospital. The minutes of a directors' meeting of CMT on June 18, 1981, corroborate Rodriguez' account of his acquisition of 40 percent of the stock in CMT at about the time mentioned by Rodriguez in this testimony.

On March 15, 1982, two new agreements were made between Rodriguez and the two corporations, HSR and CMT, calling for increased wages and benefits for Rodriquez, as president and chairman of CMT and president of HSR. The 1982 agreements, which are practically identical save for the amounts granted, and the names of the companies, listed the salary and benefits which Rodriguez was to receive from each of the companies, and outline the duties he was to perform in consideration of that compensation. Rodriguez was to have ''full responsibility,'' as chief executive officer of both CMT and HSR, to supervise day-to-day operations of the corporations subject to overall policy decisions by the board of directors.

On October 10, 1982, the board of directors of CMT voted to offer the shareholders of HSR the opportunity to purchase at a nominal $1 per share, an equal amount of shares in CMT to the shares they already owned in HSR. These amounts were minor. By January 25, 1983, only six shareholders of HSR had become shareholders of CMT, representing only 5.32 percent of the stock. But this action does add to the evidence showing the close relations between the two corporations.

b. *The Connection between HSR and CMT*

In conjunction with his bid to obtain a share in the ownership of the Company which employed him. Rodriguez argued to Drs. Soler and Badillo that they could not use HSR as a vehicle to move the new hospital project forward. As he put it, ''we cannot use San Rafael, this cannot be a substitution of San Rafael, I want to have an interest in San Rafael, in the new hospital, and that means creating a separate corporation or something apart from San Rafael because no bank would lend money to San Rafael and no bank—and the HHS (U.S. Department of Health and Human Services) in particular would not guarantee a loan, which is a condition that is essential to the building a hospital in Caguas—.''

This explanation of the reason for the creation and existence of a new entity, which came to be CMT, was repeated in HSR's Domestic Corporation Report to the Commonwealth Department of State in April 1983, where in a section entitled ''continuation of the Hospital as a going concern'' the accounting firm responsible for the statement described

[19] This arrangement apparently was to be expanded through the sale of additional limited partnerships, but like the Kidder Peabody stock sales noted above, this one did not work out either. There is a lot of evidence in this record on the devices used by Rodriguez and the various corporate entities here to raise money for the construction of the new hospital. It eventually was done but not without considerable pain, aggravation, and suffering.

[20] I found Rodriguez to be highly intelligent, and intimately familiar with the corporations involved here, and the overall financial arrangements which eventuated in the construction of the new hospital. He was not so good on details or sequences of events, but I do not believe that affects his testimony on these preliminary matters. I, therefore, rely on his testimony, and the exhibits dealing with the financial history and dealing of HSR, CMT, and the TMC Limited Partnership as set out in these findings.

[21] Based upon HSR's promises to build a new hospital, the secretary of health of Puerto Rico, who administers the Medicare program, agreed to waive, temporarily, the deficiencies at HSR, and allowed the latter to continue to operate for, as it turned out, over 10 years.

Centro Medico del Turabo, a debtor[22] to HSR, as having been ''organized by the shareholders of the Hospital's (HSR) parent (SRP) to build up a hospital to eventually replace the hospital's operations,'' continuing on to note that ''subsequently Centro Medico transferred to an affiliated limited partnership the obligation of building and operating such Hospital, except that Centro Medico will be the only general partner and as such will have complete control of its operations.''

The relationship between HSR and CMT occupied the attention of the HSR board of directors at its meetings in January 23, 1980, when Rodriguez notified his fellow directors, Soler and Badillo, of his efforts to get a series of notes approved which would assist in the financing of the new hospital and to allow HSR to recover advances made to CMT; on June 18, 1981, when there was considerable discussion on Rodriguez' salary and compensation, together with mention of a ''contract'' between HSR and CMT. If there ever was such a contract it was not introduced at this hearing. Thus, I must conclude that there was no formal agreement between the two, but that their relations were determined by the needs of CMT for advances to further the new hospital construction and the ability of HSR to fend off its continuing deficit and the threat of closure because of noncompliance with Medicare rules. Apparently HSR could remain open, under waivers, provided CMT contained to make progress in the construction of the new facility.

As far as contacts between the two, their boards of directors were the same three people, and their chief executive officers were the same person, Joaquin Rodriguez.

At a meeting of the HSR board of directors on February 1, 1982, a resolution was passed concerning some doctors who practiced or had privileges at HSR who were at the same time opposed to the new hospital.[23] After stating that HSR was ''taking all steps regarding the construction of new facilities which would be the Centro Medico del Turabo project,'' the resolution went on to state that any physician who engaged in the promotion and development of competing projects of CMT is caring out an activity,'' harmful to the best interests of Hospital San Rafael,'' and that such activity could result in their loss of hospital privileges at HSR.

Through this period, at least, it appears that Rodriguez, Soler, and Badillo, among themselves, as directors of both, viewed HSR and CMT as a single entity for purposes of internal dealings.

This view of CMT as ''related'' to HSR is reflected also in the financial statements submitted annually by HSR's auditors to the secretary of State of the Commonwealth. Under the heading of amounts due HSR from ''related parties'' in each of those reports for the fiscal years ending October 31, 1982, to October 31, 1987, show an amount owed to HSR by CMT, beginning in the 1982 fiscal year, of $379,307 to $1,052,309 in fiscal 1987. Rodriguez testified that there was no interest paid on these advances. Indeed, there is no evidence in this record that those moneys were ever repaid at all.

Added to these advances from HSR to CMT was the sum of $1 million, representing compensation due HSR an account of HSR's agreement to relinquish its license, or franchise, to operate a hospital, so that TMCLP could obtain its own license to open and operate the new hospital. An agreement between HSR and TMCLP to this effect was executed on October 31, 1983. This transaction had been authorized by the shareholders of HSR at a meeting on June 28, 1983, the shareholders, expressly voting to relinquish the license for $1 million in cash. The license was duly surrendered, and the new hospital obtained its license to open. An agreement between HSR and CMT containing a schedule of repayment for a total debt of $41,370,698.56, including the $1 million due for the franchise, was executed on March 30, 1989, but there is no evidence that any money was actually paid. HSR went into bankruptcy on June 16, 1990.

The minutes of directors' and stockholders' meetings of CMT also show a concern for the relationship with HSR. At a directors' meeting on October 18, 1982, it was voted to offer shares in CMT to current shareholders of HSR in amounts equal to shares they then held in HSR.[24] At a meeting on May 20, 1983, the CMT Board voted to guarantee a loan to HSR in the amount of $300,000, and on June 24, 1983, the board voted favorably on a motion to ''convert'' HSR to a wholly owned subsidiary of CMT by purchasing all of the outstanding stock and convertible debentures of HSR.[25]

In the HSR house newsletter ''Hablemos'' (''Let's talk''), articles written by Rodriguez during 1983 and 1984 speak of the new hospital in terms of ''we'' or us and identifying the new construction with the existing structure and its employees.

When communicating with a local bank an impression was given that HSR and the new hospital projects were part of the same enterprise. In a letter from Rodriguez on HSR stationery and dated March 25, 1980, addressed to Jose A. Luis Catto, assistant vice president of Banco De Ponce, in connection with additional financing, the letter swings from a rundown of HSR's balance sheet for the year 1979, to projections for the year 1980 and beyond, to a discussion of the new hospital, pointing out that ''*we* are almost ready to submit our preliminary application—'' (emphasis added). In another letter to Cotto, also on HSR stationery, and dated August 25, 1981, Rodriguez proudly announced that: ''[Hospital San Rafael is going through a major expansion of its facilities. It will become Centro Medico del Turabo and it will be housed in a most modern and sophisticated medical facility to be constructed in Caguas—.'' On February 16, 1982, Rodriguez wrote to Juan A. Muntaner, also a vice president with the Banco de Ponce, describing a proposed sale by HSR of the hospital buildings so that they could ''Transfer Hospital's physical asset to a corporation which is able to develop it *when the Hospital is transferred to Centro Medico del Turabo*.'' (Emphasis added.)

[22] In the amount of $379,000 as of October 31, 1982.

[23] For some time in 1981 and 1982 there was another group in Caguas which was interested in building a new hospital to be known as ''Caguas Doctors' Hospital.'' The two groups eventually worked out their differences and CMT bought out the Caguas doctors' group by a payment of $800,000.

[24] This offer was apparently accepted, but not until July 1987. The CMT board at that time voted to postpone acceptance of the offer and no more on the matter appears in the records offered in evidence here.

[25] This proposal sank from sight without a trace. Nothing more appears in the record on the matter.

These letters show that attempts to obtain credit portrayed HSR and CMT to the lender as one and the same aspiring debtor.

c. *Managers and employees*

The boards of directors of HSR and CMT were, during most of the period relevant to the issues here, composed of the same three people, Joaquin Rodriguez, a director of HSR and chairman of the board of CMT, Dr. Jaime A. Soler Zapata, chairman of HSR and a director of CMT, and Dr. Jose A. Badillo Quinones, a director of both companies. At some later time Carlos M. Pineiro Crespo was named a director of CMT, and still later, two others were appointed.

The management of both HSR and CMT was headed, during the whole period covered by these cases, by Rodriguez. Pineiro began at HSR as vice president for finance in October 1984, then was appointed executive vice president, where he remained until late 1988 when the assumed the job of executive vice president at CMT and ran the operations of HIMA until the contract with CHA became effective at the end of October 1989.

The next level of management consisted of Cyril Olivierre, vice president for finance and HSR from January 1987, then became senior vice president for finance and administration for CMT; Maria T. Dominguez, administrator (for day-to-day operations) of HSR from July 1982, then vice president in charge of patient services at CMT; Fernando A. Rodriguez, vice president for operations at HSR, and vice president for support services at CMT.

Others who made the transition were Felix Ortiz Collazzo, director of human resources and industrial relations at HSR, who became the general administrator at HIMA; Eladio Cartagena, house counsel at HSR, and then at HIMA; and Arelis Veintidos, who was a secretary at HSR, became executive secretary to Carlos Pinerio at HSR, then left HSR, went to work for Triangle Engineering, the construction manager for HIMA, where she was in charge of receiving all applications for employment at HIMA, then screening and interviewing applicants and recommending that they be, or not be, hired. When HIMA opened, Veintidos became assistant director of the department of human resources at HIMA.[26]

A list of management and supervisory people at HIMA was stipulated to by the parties and entered into evidence here. Of the 102 names on this list, including the management people named above, 85 were employed at HSR before joining HIMA.

At the professional level (not involved in the professional unit of registered nurses) the physicians working at HIMA in 1989, shows them to be substantially the same persons who were attending patients at HSR in 1988.

Finally, from a list of employees in the two bargaining units here, prepared by HIMA as of October 17, 1989, I have calculated that as of December 31, 1988, a total of 138 employees has been hired by HIMA in jobs contained within those units, of whom 92 had previously worked for HSR. Breaking it down to the separate units, I find that of 58 persons hired in the registered nurse unit, 31 were former San Rafael employees.[27]

d. *Labor relations*

Carlos Pineiro testified that during the 1987 negotiations between HSR and the Union he, as executive vice president of HSR was delegated by the board of directors the function of establishing policy in this area. He then went on to develop and implement labor relations policies. There is no direct testimony that Pineiro was assigned the policy function for labor relations at CMT, but during 1988 he was also the executive vice president for CMT. He was responsible for placing Arelis Veintidos, his secretary, who had obtained a Master's degree in industrial relations, first in a position at Triangle Engineering where she received and screened all applications for employment at the new hospital, and then, when HIMA opened, she was transferred there as assistant director of the department of human resources. While in this last position, the record here shows that she handled most if not all personnel and employee relations functions. Pineiro was at least up to the effective date of the contract with Caribe Hospital Affiliates, the executive vice president of CMT and in charge of all management operations at HIMA. He was also, concurrently, a member of the board of directors of CMT. Thus, I think an inference is warranted that Pineiro continued to set policy, subject to approval by a majority of his fellow directors, for CMT and its subsidiaries, TMCLP and HIMA.

e. *Conclusions*

The Third Circuit has set out the essence of the single employer doctrine in stating:

> A ''single employer'' relationship exists when two nominally separate entities are actually part of a single integrated enterprise so that, for all purposes, there is in fact only a ''single employer.'' The question in the ''single employer'' situation iswhether the two nominally independent enterprises, in reality, constitute only one integrated enterprise. [*NLRB v. Browning-Ferris Industries of Pennsylvania, Inc.*, 691 F.2d 1117, 1122 (3d Cir. 1982).]

Over the years the Board has established criteria to be used in determining whether a single employer relationship exists. As affirmed by the Supreme Court in *Broadcast Technicians Local 1264 IBEW v. Broadcast Service of Mobile*, 380 U.S. 255 (1965), the criteria are ''interrelation of operations, common management, centralized control of labor relations and common ownership.''

The General Counsel has alleged that CMT and HSR are alter egos, and the former is in fact, a disguised continuation of the latter enterprise. Like the single employer question discussed above factors to be considered are (1) interrelations of operations; (2) common management; (3) common ownership; and (4) common control of labor relations. The Board has generally found alter ego status where the two enterprises

[26] There was no director at the time of this hearing, so Veintidos was actually running the department.

[27] This does not, of course, include the registered nurses, Norma Flores, Isabel Arriaga, and Carmen Merced, alleged discriminatees who were not hired by HIMA, and whose situations will be considered herein.

involved are found to have substantially identical management, business purposes, operations, equipment, customers, and supervision, as well as ownership. *Crawford Door Sales Co*., 226 NLRB 1144 (1975); *Denzil S. Alkire*, 259 NLRB 1323 (1982); *Advance Electric*, 268 NLRB 1001, 1002 (1984). In this last case, the Board stated clearly that ''we generally have found *alter ego* status where two enterprises have 'substantially identical' management, business purpose, operation, equipment, customers and supervision, as well as ownership.''

A further, and critical, consideration to the finding of alter ego status, is whether the new company was created ''to evade responsibilities under the Act.'' *Fugazy Continental Corp*., 265 NLRB 1301 (1982). As the Third Circuit stated in *NLRB v. Al Bryant, Inc*., 260 NLRB 128 (1982), enfd. 711 F.2d 543 (3d Cir. 1983), cert. denied 464 U.S. 1039 (1984), while the focus of the single employer doctrine is the absence of an arm's-length relationship between companies, the focus of the alter ego doctrine is ''the existence of a disguised continuance or an attempt to avoid the obligations of a collective-bargaining agreement through a sham transaction or a technical change in operations.''

It does not appear to me that there is a real question of fact concerning any of these standards.

There is common ownership in that the two doctors, Soler and Badillo own 87 percent of the stock in HSR, along with some minority shareholders. The same two doctors own about 60 percent of the stock in CMT, with some larger holdings, a little over 18 percent each by Joaquin Rodriguez and Carlos Pineiro, with, again, some minority shareholders. Thus, the doctors control a majority of shares in both corporations. TMCLP and HIMA are, of course, instruments of CMT.

There is common management. Since 1978 Joaquin Rodriguez has exercised executive control over both HSR and CMT. This conclusion is based upon Rodriguez' own testimony about how he took charge of HSR in 1978; was responsible for the creation of CMT at that time; and acted as president and chief executive officers of both HSR and CMT during all of the period covered by this case. The correspondence and documents entered here are either from or to these corporations is mainly directed to or signed by Rodriguez, except in a few instances. The testimony of union officials Alvarez and Gonzalez, employee Milton Suarez, and Managers Pineiro, Ortiz and Cartagena, all shows that Rodriguez was and is the boss and all policy is determined by him, or by him with his managers.

There is common supervision. As I have already noted, the same management people from the top level, Rodriguez and Pineiro, the middle level, Ortiz, Veintidos, Cartagena; and the lower level, the 85, more or less, out of 102 supervisors and department heads, all moved from HSR, as it was closing, to the new hospital.

There is a common business purpose and customer base. While at a hospital patients come and go, HIMA is located in the city of Caguas, and was built and designed to serve the same, maybe a somewhat larger area. The type of service and the area in which it is performed remain basically the same.[28]

The operations of the two hospitals were not interrelated in the sense that they functioned as a team, is or a synchronized manner. It is true that HIMA did purchase equipment from HSR, and that equipment was transferred to HIMA along with management, administrators, professional, technical and nonprofessional employees, but these transfers were not made in a context of continuing coordinated or integrated operations, but on account of the discontinuance of operations by the one, and assumption of operations by the other.

In this case, despite the facts I have found above concerning its relations with HSR made to its offices and directors, its employees and to outsiders, CMT continuously and adamantly refused to admit its relationship with HSR to the Union. In a letter of April 15, 1987, responding to a request by union delegates at HSR, Rodriguez parried the delegates' request to discuss the transfer to CMT by referring them to Pineiro and stating that it was premature to talk about CMT since they had not yet secured their financial requirements. Later, as the 1987 negotiations began, the representatives of HSR refused to discuss the application of any contract to CMT,[29] and that refusal was reflected in the conversation between Pineiro and Gonzalez on October 27, 1987.

As I have noted above in connection with the setting aside of the settlement agreement, the Respondents here were in a position to know all of the facts about their relationship. The development of the new hospital was ongoing for at least 10 years, from 1978 to 1988. Both HSR and CMT have employed learned and skillful labor counsel during this period. It thus seems to me clear that the Respondents knew, or reasonably should have known what the legal effect of that relationship was and is. To continue to insist that these two corporations are, in effect, strangers to each other leads me to the conclusion that the new company, even though it may have been created initially in order to avoid the credit problems encumbering HSR,[30] became a ''device to evade responsibilities under the Act;'' *Fugazy Continental Corp*., supra. Therefore, I find that HSR and CMT are a single employer and alter egos used in this case to attempt to avoid continuing bargaining obligations under the Act.[31]

f. *The successorship issue*

The General Counsel has maintained throughout this proceeding that if it is found that HSR and CMT are not a single employer, or alter egos, then, in the alternative, CMT is a successor employer to HSR, and is obliged to bargain with the Union as the representative of its employees who were formerly employed at HSR in the previously certified appropriate bargaining units.

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[28] The fact that HIMA is larger, more elaborate, more modern and better equipped makes a difference in degree, but not in kind, of the services offered.

[29] Letter of Felix Ortiz to Luis Alvarez dated July 29, 1987.

[30] CMT was incorporated in 1978; some 5 years before the Union came into the picture at HSR.

[31] At the same time the fact that these two companies were not actual employers at the same time does not affect the conclusion that they are a single employer within the meaning of the Act. *Overton Markets*, 142 NLRB 615, 619 (1963).

It was in pursuit of this theory that the Regional Director for Region 24 filed a petition with the United States District Court for the District of Puerto Rico under Section 10(j) of the Act seeking to enjoin CMT (and Joaquin Rodriguez) from refusing to bargain with the Union and from failing to employ one Milton Suarez, a former employee of HSR. As I have noted, above, in the introduction, the judge, Honorable Carmen Consuelo Cerezo, issued her opinion and order on August 8, 1989, ordering the Respondents CMT, Rodriguez, TMCLP, and HIMA, pending the final determination of these matters before the Board, to refrain from failing and refusing to recognize and bargain with the Union as the bargaining representative of a unit of licensed practical nurses and technicians,[32] and that the employers bargain in good faith with the Union and reinstate Milton Suarez to his former or substantially equivalent position.

The facts as found by the Judge, based on affidavits filed with the court are entirely consistent with the facts I have found here, based upon the testimony of witnesses and from documents introduced by the parties. As the judge pointed out:

> In *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 107 S.Ct. 2225 (1987), the Supreme Court recently clarified its earlier ruling in the area of successorship in the case of *NLRB v. Burns International Security Services*, 406 U.S. 272 (1972). Approving the Board's approach to these cases, the Supreme Court stated that the focus is on whether there is ''substantial continuity'' between the enterprises, which depends on (1) whether the new company has acquired substantial assets of its predecessor; (2) whether the business of both employers essentially the same; (3) whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and (4) whether the new company has the same production process, produces the same products, and has basically the same body of customers. *Fall River*, 406 U.S. at 43. Of Paramount importance in making this determination is whether, from the employees' perspective, their job situation remains essentially unchanged. *Id*. (TMCLP)
>
> In the instant case, Respondent acquired from the predecessor (HSR) the right to operate a hospital in the Caguas area through the License Surrender Agreement for a consideration of $1 million, $242,602 worth of equipment, and the lease of the PMX Mobile X-Ray Unit. The License Surrender Agreement in particular, represents the acquisition by Respondent of a significant asset. Although Respondent did not purchase the predecessor's deteriorating physical plant and out dated equipment, it nevertheless acquired sufficient assets from San Rafael to meet the first test. See *Landhill Press*, 282 NLRB 378 (1986).
>
> Petitioner [Regional Director] has also shown, and Respondent does not seriously contest, that HIMA meets the remaining criteria for successorship. Both San Rafael and Respondent are hospitals and health care institutions and, as such, operate the same business. Respondent also provides health care services to the same community previously served by Hospital San Rafael, and its employees are doing the same jobs under the same working conditions and supervisors.
>
> The ''substantial continuity'' between these institutions is particularly established in the instant case by the fact that HIMA was conceived from the beginning as a replacement for Hospital San Rafael. The employees of San Rafael were informed of that fact throughout the regular updates on the on the plans for the new facility contained in the publication ''Hablemos.'' Since Respondent made a commitment to the Union hire 95% of the San Rafael employees at HIMA and give them preferential seniority over other employees, it is reasonable to conclude that, from these employees' perspective, their job situation at HIMA remains unchanged. In view of the above, this Court finds that there is reasonable cause to believe that Respondent is the legal successor to Hospital San Rafael. [*Asseo. v. Centro Medico del Turabo, Inc. et al*., U.S.D.C. Puerto Rico Civil 89-0490CC, Aug. 8, 1989, pp. 12–13.]

While I am not precluded from making findings contrary to those the judge has made here, my own independent evaluation of the evidence here has led me to the same findings and conclusions.

I can add to this only my finding that these facts show that CMT, and its subsidiaries TMCLP and HIMA, are the successor employer to Hospital San Rafael.

C. *The Alleged Unfair Labor Practices*

1. The refusal to bargain, 1987

All of the preceding has been necessary to establish the somewhat complicated procedures which took this case through the initial charges, the first 2 days of hearing and the May 19, 1988 settlement agreements; the alleged violations of the settlement agreement and the filing of new charges; identification and delineation of the several corporate, partnership and subsidiary parties to the proceeding; and the legal relationships between these parties. Having now set out what I find these relationships to be, I can proceed to narrate the facts surrounding the alleged unfair labor practices.

The Union organized the employees of Hospital San Rafael during 1983 and on January 20, 1984, a majority of HSR employees in the following two units selected the Union as their collective-bargaining representative. These units were certified by the Regional Director on January 30, 1984:[33]

> (A) *Included*: All registered nurses and pharmacists employed by Respondent at its hospital located in Caguas, Puerto Rico.

[32] For some reason not explained in the record, the judge's findings were based only on the ''technical'' unit, leaving out any mention of the ''professional'' unit of registered nurses. The inclusion or exclusion of the professional unit, however, does not change the facts of the successorship question as found by the Judge or as found here.

[33] The Respondents have denied that these units are appropriate herein. However, Respondents have the burden to show that the units are no longer appropriate and have failed to do so. *Indianapolis Mack Sales & Service*, 288 NLRB 1123 fn. 5 (1988). Cf. *New London Convalescent Home*, 274 NLRB 204 (1985), enfd. 815 F.2d 517 (2d Cir. 1987), cert. denied 108 S.Ct. 140.

Excluded: All other employes, office clerical employees, guards and supervisors as defined in the Act.

(B) *Included*: All licensed practical nurses and technicians employed by Respondent at its hospital located at Caguas, Puerto Rico, including escorts: EKG technicians; Respiratory Therapy technicians; X-Ray technicians; Operating Room Technicians; Dietary Technicians; Medical Records Technicians; Admission Clerks; Record Room Clerks; X-Ray Clerks; Diet Department Clerks; Respiratory Therapy Clerks; Pharmacy Clerks; Operating Room Clerks; Emergency Room Clerks; Ward Clerks; and Pharmacy Auxiliaries.

Excluded: All other employees, office clerical employes, professional personnel, guards and supervisors as defined in the Act.

Following the certification the Union and HSR negotiated a collective-bargaining agreement to be in effect from September 1, 1984, to August 31, 1987.

On August 28, 1985, Luis Alvarez Colon, vice president of the Union Nacional de Trabajadores de la Salud, wrote to Felix Ortiz Collazo, director of personal of HSR informing him of the names of the delegates (or stewards) for the Union at HSR. The general delegate was Milton Suarez, who worked in the X-Ray department. Also included as delegates were Norma Flores, Carmen Merced, and Delia Diaz, with 14 other employees in various departments.

On May 15, 1987, Henry Nicholas, president of the Union, wrote to Ortiz informing him that it was the intention of the Union to enter into negotiations for a new contract and requesting a meeting as soon as possible. On May 27, Ortiz, in turn, wrote to Alvarez expressing the interest of the hospital in negotiating a new contract and requesting that Alvarez send him a copy of the Union's proposals for study. Ortiz concluded by stating that the Company would study the proposals, and then communicate with the Union about a date to negotiate. Alvarez replied on July 20, enclosing a proposed contract and suggesting July 24 for a meeting.[34]

When the Union's proposals were received, Ortiz was apparently on vacation, so Carlos M. Pineiro, executive vice president of HSR, replied on July 22, asking for more time to study the proposals, and suggesting August 4 for a meeting. On July 29, Ortiz, back from vacation, had gone over the proposals and wrote the Alvarez complaining that the proposals were unreasonable, unacceptable, made in bad faith, and economically unrealistic. Further, Ortiz stated ''We want to establish clearly that Hospital San Rafael is not going to negotiate, and cannot negotiate for, or in representation of, Centro Medico del Turabo. If you have any claim with any other organization, you should address that organization.

''Your certification as a union representative, as far as we are concerned, is only for Hospital San Rafael purposes. If you or your organization seriously desire to negotiate with Hospital San Rafael, you should start by submitting a proposal to this entity without including third parties.'' Ortiz returned the Union's proposal and informed Alvarez that he would wait for a new proposal to schedule a meeting date. There was further correspondence during August, culminating in a letter from Ortiz to Miguel Gonzalez Vargas, who was then representing the Union, stating that HSR would not negotiate if the Union continued in its effort to negotiate with CMT mentioned in the contract.

This (along with some other matters which were settled informally by the May 19, 1988 agreements) led to the filing of charges and to the first days of hearing in this matter at which time the May 19, 1988 settlement agreements were executed.

I have set aside the settlement agreement between HSR and the Union, and reinstated the charges and the complaint alleging that HSR had refused to bargain in good faith by refusing to bargain unless the Union deleted references in its proposals to CMT.

I have found that HSR and CMT were and are alter egos, basically the same person for purposes of labor relations law.

I, therefore, find that HSR, by insisting upon the deletion of the name of its alter ego from the Union's bargaining proposals, and by insisting on the exclusion of the alter ego from the bargaining process, HSR has violated Section 8(a)(1) and (5) of the Act. *Preterm, Inc.*, 240 NLRB 654 (1979).[35]

Finally, on January 14, 1988, in a conversation with Gonzalez, Ortiz stated that the hospital no longer recognized the collective-bargaining agreement (which had expired on August 31, 1987) and would in effect, no longer recognize the Union. I find this also to be a violations of Section 8(a)(1) and (5) of the Act.[36]

2. The refusals to bargain, 1988

After the execution of the settlement agreements on May 19, 1988, the Union and HSR met again to continue bargaining for a new contract to replace the agreement which had expired on August 31, 1987. The first session was held on June 15, 1988, at the Governmental Center in Caguas. Rep-

[34] This proposed contract consisted of 37 articles in 52 pages. I have not compared this document to the 1984–1987 contract, but as matters turned out, the content of the new contract proposals is not important.

[35] After receiving the August 10 letter, the Union revised its proposals to delete references to CMT. But at the first negotiating session, held on August 14, 1987, the Union wanted to talk about a 3-year agreement, and HSR wanted to talk about the effects of its closing in 1988. In October, the Union, in a letter to Joaquin Rodriguez, president of both HSR and CMT, reiterated its position on a 3-year contract. Rodriguez replied that CMT would not participate in any negotiations nor would it recognize the Union. In this, too, I find that HSR has violated Section 8(a)(1) and (5).

[36] Two decertification petitions had been filed by an individual in the two units here, Cases 24–RD–350 and 24–RD–351, about January 13, 1988. Because of the pendency of Unfair labor practice charges the Regional Director dismissed the Petitions. This action was upheld by the Board under date of April 6, 1988. During the hearing in this case, counsel for Respondents objected to the fact that these petitions were not further processed after the settlement agreements had been executed on May 19, 1988. But, ''where an employer, pursuant to a settlement agreement, has agreed to bargain with the union, the employer must bargain with the Union for a reasonable time, and no question concerning representation can be raised during this period; *Shangri-La Health Care Center*, 288 NLRB 334 (1988); *Poole Foundry & Machine Co*, 95 NLRB 34, 36 (1951); *Freedom WLNE-TV*, 295 NLRB 634 (1989). Thus, no decertification petition could have been entertained in the period between the signing of the settlement agreements in May, and the subsequent refusal to bargain in September 1988.

resenting HSR were Attorney Godwin Aldarondo Girard, Attorney Eladio Cartagena Colon, and Felix Ortiz Collazo, and present for the Union were Miguel Gonzalez Vargas, Milton Suarez Collazo, Delia Diaz Gonzalez, and possibly Carmen Merced Baez, Ernesto Rivera, and Attorney Perez Munoz.

According to Miguel Gonzalez, the Union attempted to steer the discussion to a 3-year contract which would carry over to the new hospital, and the Company wanted to talk about the closing of HSR. They did discuss some of the issues left over from previous meetings, but came to no agreements, even though, in Gonzalez's words, they were ''getting near'' on some of them.[37]

A second, or third, meeting was held on September 14 again at the Governmental Center in Caguas. This was a longer meeting and we have in evidence a transcript, in Spanish and English, of a tape recording made by Respondent at the meeting. Almost the same cast was present. Aldarondo, Cartagena, and Ortiz for the Company, Gonzalez, Suarez, and Merced, with one Nestor Rivera, for the Union. After some considerable discussion the discussions again broke down over the question of including CMT in the agreement as a party employer. At the end, HSR insisted that the question be settled before anything else could be discussed. Attorney Aldarondo insisted that it was ''essential in that the Union admits in the Agreement that the employer is the Hospital San Rafael, Incorporated''—''and is the only employer in this case.'' With that, Aldarondo stated that he was going to take up the matter with the Board, and he bade the Union a ''good afternoon.'' There were no further meetings between the Union and representatives of HSR.

There was, however, additional correspondence. On September 16, 1988, Alvarez sent a letter to Joaquin Rodriguez as chairman of the boards of both HSR and CMT inquiring about the opening of the new hospital and the promised hiring of 95 percent of the employees at HSR. Receiving no answer to this, Alvarez sent a reminder on October 14, requesting that Rodriguez furnish the information requested on September 16.

On October 25, Rodriguez replied to the October 14 letter, on a CMT and TMCLP letterhead. He reiterated the view that ''this limited partnership (TMCLP) and the corporation owner of Hospital San Rafael are two entirely separate and independent entities.'' Then, waxing poetical, ''whose destinies are like parallel lines.''[38] Rodriguez pointed out that the Union, and Alvarez himself, had acknowledged this fact at the Labor Board. He then referred Alvarez to Pineiro for any discussion of matters concerning HSR. Rodriguez did indicate that CMT would honor its promise to hire the 95 percent of unit employees, and said that CMT was engaged in obtaining permits in order to open.

With respect to Pineiro's position, I note that 2 days after the October 25 letter was dated, Gonzalez and Milton Suarez visited the new hospital where they met Pineiro. He invited them into an office, where, in response to a question from Gonzalez, about working conditions there at the new hospital, he replied that the hospital did not recognize any union, and that there was no relationship between this hospital and HSR. Gonzalez then asked Pineiro if he was speaking for CMT, and Pineiro replied that he was not working for CMT and that he was there, like them, as a ''visitor.''

On December 19, 1988, Alvarez wrote to Rodriguez, as president of HIMA, requesting a negotiating meeting, and protesting the refusal to recognize the Union, changes in working conditions, and the refusal to recall union delegates to positions at HIMA. Rodriguez replied to this letter on January 5, 1989, reiterating his position that the settlement agreement had put the question of recognition to rest. On the same date Attorney Heber Lugo Rigau also wrote to Alvarez, adding his opinion that the matter of recognition of the Union by CMT and its subsidiaries was settled in May 1988 by the settlement agreements reached at that time.

Since HSR and CMT are alter egos, I find violations of Section 8(a)(1) and (5) here in the refusal by the ''HSR'' negotiators to bargain further on September 16, 1988, unless the Union agreed to a clause which limited the scope of the agreement to HSR, and did not include CMT. I find further violations in the refusals by Rodriguez in his letters of October 25 and January 5, Lugo's letter of January 5, and Pineiro's refusal in person on October 27 to recognize the Union as bargaining representative for employees of the new hospital, HIMA.[39]

3. The transition and hiring process

The transition from Hospital San Rafael to Hospital Interamericano de Medicina Avanzada took place on November 13 and 14, 1988. By November 14, almost all the employees of HSR, save a few in medical records who were in the units involved here, and others concerned with closing down the facility, who were not involved in these cases, had either been laid off, or had transferred to the same or similar positions at HIMA.

The movement of HSR employees to HIMA, even where they merely moved their location, but continued to perform the same functions, was not automatic. For some months before the move, Arelis Veintidos, who had been the secretary to Carlos Pineiro, executive vice president of HSR, was working as office manager for the Triangle Engineering, construction manager at the HIMA jobsite. While she was there[40] Pineiro noted that she was performing well, and he

[37] Attorney Cartagena testified about a short meeting which was held on June 7, at which an attorney for the Union named Santiago asked the hospital representatives to bring in (proposals on) some points which he then discussed.

[38] It sounds better in the original Spanish: ''Cuyos destinos son como lineas paralelas.''

[39] See discussion, above, and *D.I.C. Mfg. Co*. 294 NLRB 426 (1989).

[40] Testimony on this came from Pineiro, but at no time was any reason given to explain why Veintidos was working for Triangle. Pineiro said that she had obtained a Master's degree in industrial relations and did not want to be a secretary any more. But that does not explain why she left what must have been a very responsible position at HSR to go to work at what must have been a clerical job, of a temporary nature, in a construction trailer on the HIMA job site. Veintidos testified in this proceeding, and impressed me as extremely alert and capable. She could have handled the office manager job in the trailer, or any other job, but it is more likely that her separation from HSR and CMT and her involvement in the hiring process for HIMA while ostensibly working for Triangle was to try to avoid any link between HSR and CMT in that hiring process. I, therefore, infer and find that Veintidos was assigned to Triangle as an agent for both HSR and CMT to control the hiring process at CMT-HIMA without ascribing responsibility to HSR.

talked to her about a human relations position at HIMA.[41] It was then arranged that Veintidos would hand out applications for people interested in employment at HIMA. Later, on August 1988, this assignment was broadened to include interviews and screening of applicants. After HIMA opened, another person was hired to handle applications and, Vientidos moved out of the trailer and into the position of assistant director of human resources. She continued, according to Pineiro, to screen and review applications from former HSR employees.

4. Substantial and representative complement

Under the General Counsel's alter ego theory, with which I agree, with the opening of the new hospital, the bargaining obligation which existed between the Union and HSR continued undiminished. The new hospital was obliged to maintain at least the same level of wages and benefits, and it was required to negotiate with the union any changes in wages, hours, or working conditions: *C.E.K. Industrial Mechanical Contractors*, 295 NLRB 635 (1989).

The General Counsel's alternative theory that CMT is the successor employer to HSR I have already found to be valid. Having found that, I must also find that CMT employed a majority of former HSR employees in order to further find an obligation on CMT to bargain with the Union. *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987). The Board has determined that this majority must be shown to have existed when hiring of the successor operation has reached a ''Substantial and representative complement'' of ultimate employee complement.

The new hospital opened on November 19, 1988, with 50 beds available. By November 19, as the district court found in the 10(j) case cited above, the job classifications for HIMA were substantially filled, at a time when most of the former HSR employees had been hired. The court further found that the total number of employees in the technical unit had reached 73 percent of the total number the hospital expected to hire when it reached a 150-bed level of operations. The judge found this number to be equivalent to the first shift, used as a benchmark by the Supreme Court in *Fall River*, 482 U.S. at 52. While this projection by the hospital turned out to be unrealistic, the judge found that the technical employees hired by November 19, 1988, still represented 64 percent of the actual number of employees hired by April 15, 1989, when it was close to the 150-bed level of operations.[42] I concur with the court's view that ''it is reasonable to conclude that Respondent (HIMA) had reached normal operations by November 19, 1988. Compare *Hospital San Francisco*, 293 NLRB 171, 172 (1989), with *Myers Custom Products*, 278 NLRB 636 (1986).

Since CMT employed 69 people in the technical unit as of November 19, out of which 51, or 74 percent were former HSR employees the Union is entitled to a rebuttable presumption among those employees in that unit.

For some reason which is not clear to me in this record, there are no references in the judge's decision, nor in the General Counsel's brief, to unit A, the professional unit of registered nurses in the analyses by the judge and the General Counsel of the Union's majority status as of November 19, 1988. Of course, if the Board adopts the alter ego theory discussed herein, Union does not need a majority in the professional unit, but if the Board chooses to proceed on the successorship theory then there is a question of whether the Union had a majority at a time when a substantial and representative complement of registered nurses had been hired. Using the criteria established in her case by Judge Cerezo, and argued by the General Counsel, and drawing the data from General Counsel's Exhibit 130, I find that as of November 19, 1988, CMT had hired 36 registered nurses for HIMA, of when 30 were former HSR employees.[43] If the same standards are followed here, as with the technical unit, it appears that the Union did achieve a majority in a substantial and representative complement by the November 19 date.

The Union here, by personal request from Gonzalez to Pineiro on October 27, and by letter from Alvarez to Rodriguez on October 14, requested that CMT recognize the Union. The failure of CMT to recognize and bargain with the Union constitute further violations of Section 8(a)(1) and (5).

In addition, CMT, by unilaterally imposing new and different working conditions on its employees further violated Section 8(a)(1) and (5).

5. The individual discriminatees

a. *Milton Suarez*

Milton Suarez began work as an X-Ray technician at HSR in 1980. In 1983, Suarez contacted the Union and began to organize the technical and professional employees at the hospital. In July 1983 Suarez was discharged. He went to see Eladio Cartagena, who at that time was temporarily filling the job of personnel director, Cartagena told him that he was being fired ''for organizing meetings to bring the union to the . . ., with the employees to bring the union in to the hospital.'' After this Suarez continued his organizing efforts outside of the hospital and served as a union observer at the election in January 1984. Later, after charges had been filed with the Board, a settlement was reached and Suarez was reinstated in his job at the hospital. He participated in the negotiations which resulted in the 1984–1987 contract, and was selected by the Union as general delegate (chief steward) for the hospital.

[41] At this time, of course, Pineiro was still executive vice president of HSR. The fiction of the separation of HSR and CMT is apparent here.

[42] My figure, based on an exhibit prepared by Respondent CMT and introduced by the General Counsel as G.C. Exh. 130, shows 64 people employed in the technical unit as of November 19, 1988, and 112 (from R. CMT Exh. 10) employed in this unit on April 15, 1989. The percentage in that case would be 57 percent. My figures may not be accurate, because the parties stipulated that as of November 19, 1988, HIMA employed 69 people in unit B, of whom 51 were former HSR employees. Since this is what the parties say is so, I will use this figure in computing the percentage of former HSR employees as of that date.

[43] I would note that as of December 31, 1988, there were 58 nurses in the unit, and 31 former HSR employees. Between then and April 15, 52 more were hired, but only three former HSR nurses. There were no allegations of discrimination, except for three nurses whose situations will be considered herein, so it would seem that they just ran out of former HSR nurses because of the proposed increase from 102- to 300-bed capacity, or because of higher standards for care, requiring, proportionally, more RN's to attend to the patient care required.

Suarez also participated in the negotiations with the hospital during 1987 and 1988, and in protest meetings and picketing while these negotiations were going on. At one of these demonstrations, an unsuccessful effort in October 1988 to persuade a number of employees to picket in front of HSR, Suarez, together with Norma Flores, Isabel Arriaga, and Carmen Merced, were observed by hospital managers and supervisors including Felix Ortiz, Ellen Keiser, director of nursing, Efren Martinez, medical director, Eladio Cartagena, and others. According to Suarez, and Merced and Flores who also testified about this incident, some hospital employees were frightened by the supervisors watching them, and did not participate in the demonstration. In the end, only those four participated in this demonstration.

Suarez testified that he became aware of the plans for a new hospital in 1981 or 1982. He did not indicate that this had anything to do with his organizing efforts in 1983, but it is clear from the record that the employees of HSR were concerned about what would happen to them when HSR closed and the new hospital opened. After the certification of the Union in January 1984 and the execution of the first collective-bargaining agreement later that year, that concern became an institutional as well as a personal matter. By the summer of 1985 relations between management, the Union and the employees became strained. On August 30 Rodriguez addressed a memorandum to the employees of HSR attacking Milton Suarez and the Union. The memorandum is important enough in illustrating Rodriguez' feelings toward the Union and its activities to warrant including it in its entirety here:

> The famous ''UNTS,'' under the director of ''Mr. Knows it all'' Milton Suarez, Head Steward of that Union, has begun a campaign against the Hospital and now they say that the Hospital is the one which has started a ''Destructive Campaign toward the workers'' unity. As I do know what their purpose is, other than the patients be admitted to another hospital—somewhere else—in which case the employees of San Rafael will need to be sent to that other place—, I want to clarify other *lies that they are saying*.
>
> Lie # 1—*THAT WE WANT TO DESTROY THE WORKERS' UNITY*
>
> I ask myself, are the workers united to scare away the patients from the Hospital so they go to other hospitals? You do not have to be a genius to know that if the Hospital is accused in public that the patients are being given a deficient service (something that you know *is a lie*). the [sic] only thing achieved is to destroy the Hospital's image: an image that has taken us too long to recover after the Hurricane Castellon.[44]
>
> TRUE: What we do not want is that there be ''unit of workers'' to mess up the table where *ALL OF US* eat. We do not need this and if that is what the UNTS is . . . . we do not want it.
>
> LIE # 2—THAT WHEN THE EMPLOYEES OF HOSPITAL SAN RAFAEL ARE TRANSFERRED TO THE *VERY NEW ONE* THEY ARE GOING TO LOSE THE BENEFITS THAT THEY NOW HAVE.
>
> TRUE: In order to clarify once and for all this myth, I tell you, on behalf of Hospital San Rafael and of Centro Medico del Turabo—in which neither Milton nor the UNTS have put one even one—that your jobs are secure. That you are going to be transferred without further ado . . . with the same salary (or more, because by then you must have had several additional raises, that the Hospital will pay you and not the UNTS and much less Milton), without probationary period and *with all the same benefits*.
>
> Already in a previous occasion, I made a similar promise. You will remember that in 1982 I promised every one who was going to be affected by the instalation [sic] of the computers that nobody would be left without a job. I ask you; was someone dismissed? Who are you going to believe, Milton, the UNTS, or me?
>
> We suspended Milton and Berrios because they were distributing leaflets in the Hospital as if we were still in an election campaing [sic] and violating a specific disposition which was known to every one. How much longer are we going to tolerate the UNTS to do whatever they want to in the Hospital? We have been liberal enough. We have let them distribute all kinds of communications while they have been in campaign (as approved in the *NO SOLICITATION, NO DISTRIBUTION* rule) but, why do we have to do it now?
>
> The UNTS is bleeding from its wound. They were upset because they did not win the elections for the units of sanitation, diets and maintenance. They have harassed their co-workers and they have accused them of being stupid because they voted giving a vote of confidence to the Hospital Management. For how long do we have to put up with so much banditry? Why do they have to continue their campaign? Get on with your work and stop pestering us.
>
> Last Wednesday almost all the Union delegates met in my office and Mr. Luis Alvarez, their President, requested on behalf of every one, that I should reduce the suspension of the suspended co-workers only to two (2) days and that, in addition, we let them charge the days lost to regular vacations. I requested one day to answer their petitions. I consulted with my pillow and I was going to agree with their petitions. However, the next day, on Thursday, first thing in in the morning they again distributed another leftlet [sic] challenging the Hospital. How good one can be short of becoming an as . . .? How it is possible that we should accept a petition that is within out [sic] authority to grant? We have run out of checks to be slapped at.
>
> To our unionized co-workers—both those unionized by their own decision, as well as those that had no other choice—I ask you: Do you agree that the Union should blemish the Hospital's image? I am sure that the majority will answer NO. Then, make your voice be heard; do not let that an immature person decide for all of you.''

Rodriguez expressed regret, in his testimony on July 14, 1989, for having written this memorandum, but he blamed it on ''all kinds of lies'' the Union was spreading around, disparaging the hospital. However, the sentiments expressed in

[44] This does not refer to a tropical storm, but to one Rudy Castellon, a former owner of the hospital, whom Rodriguez blamed for many of its financial problems at the time he took over.

that memorandum show a deep and abiding dislike and distrust of the Union and its agents, particularly Milton Suarez, which is reflected in efforts made by HSR and CMT to avoid the transfer of Union obligations from HSR to CMT. In my own opinion, the memorandum more accurately reflects Rodriguez' real sentiments than his *mea culpa* at this hearing. There is no indication that he ever issued any apology or confession of error to the employees of HSR or of HIMA. Moreover, the memorandum is consistent with Cartagena's statements to Suarez when he fired him in 1983, and also with the words of Arelis Veintidos in a conversation with Suarez early in 1988 when she told Suarez that she wanted to make the new hospital ''work as really a hospital should work.'' When he asked about labor problems she replied that she could not direct a hospital with a labor problem, but it was ''like fashion, that matters pass but everything goes back to normal.''

All of this demonstrates to me an attitude of antiunion animus on the part of the Respondents here, and a determination by management to eliminate the Union as a ''problem'' in its operation of HIMA. This last point is borne out, as I have found, by the efforts made by Rodriguez, Pineiro, Cartegeno, Ortiz, and Veintidos to build a corporate wall between HSR and CMT, and to continue to argue this issue to the present time, despite the overwhelming weight of contrary evidence.

A part of any campaign to keep the Union out of the new hospital could well be the refusal to rehire union activists. If CMT had in mind to do this, there were problems, first with the pledge Rodriguez included in his August 30, 1985 memorandum to all employees, and, second, the settlement agreement of May 19, 1988, in which CMT committed to employ a minimum of 95 percent of the employees employed by HSR at the time that HIMA began its operation as a hospital. while we have no figures on the number of people employed by HSR in the two units involved here, in November 1988, I would estimate from the numbers who were actually hired by CMT, that there were about 100.[45] This is not enough on which to base a finding, but might hint at a reason why only five union delegates and officers were not hired at CMT.

Turning to Suarez' individual situation, he went to the HIMA construction site early in 1988, and had a conversation with Arelis Veintidos, described above. Suarez did not, however, make out and file an application for employment until October 27, when he accompanied Miguel Gonzalez to the now almost completed HIMA, where they met and conversed with Carlos Pineiro. While they were at the new hospital Suarez handed in an application for employment.

On November 14, Suarez returned to HIMA and talked with Veintidos. He asked if he was going to be hired, and she replied that she did not know. He returned on November 23 and was told by Veintidos that the hiring process was ''slow.''[46] She said she was willing to talk about his application, and his employment, but she did not mention any problems with his employment at HSR. Suarez heard no more from Veintidos, or anyone at HIMA, and was not hired.

Felix Ortiz testified that Suarez had a lengthy record of insubordination, absenteeism and suspensions from 1984 down to August 1988. He did not mention the 1983 discharge, nor the August 30, 1985 memorandum from Rodriguez. However, the only document communicated from Ortiz' office at HSR to Veintidos at HIMA was a form entitled ''Verification of Employment References'' showing absences in 1987 of no days, and absences in 1988 of 9 days for illness and 6 days of vacation in the period January to August. The form showed a 20-day suspension in 1987 for ''violations of administrative rules.'' Although there is no indication of any days of absence in 1987, the form states that there was an ''absenteeism pattern on Mondays and Fridays during the year 1987.'' This document bears a symbol showing that it was approved by Ortiz, and was sent to HIMA.

Veintidos testified that she made the decision not to hire Suarez based upon ''a consistent pattern'' pointed out in the verification form, in the last 2 years, of absenteeism including employment and salary suspensions for violations of administrative rules. As she stated, ''An employee or employee candidate with that employment reference is not the best candidate for employment.''

Veintidos testified that she had never consulted with Ortiz about Suarez or any of the employees who had applied from HSR. I found Veintidos to be articulate and highly intelligent, and I am sure she will not be surprised that I do not believe that she did not contact Ortiz, or her old boss, Pineiro, or even Rodriguez, with respect to hiring of certain individuals. After all, she had worked for Pineiro in a responsible position at HSR. She must have known and worked closely with Ortiz in her years at HSR. She must have known of the perceived problems which Rodriguez and other managers of HSR had had with the Union, with Suarez (''Mr. knows it all'') and with those who were close to Suarez in the leadership of the Union. She first denied that she had any knowledge about Suarez other than the verification form, then admitted that she had known Suarez, and about his union activities.

But, even if I do not specifically discredit Vientidos' testimony on this point, I find that she herself knew all these people and their opposition to management policies, their passing out of literature, their aborted attempt to persuade other employees to picket, and their other actions which would impede Veintidos, as a loyal agent of management, in her effort to make the new hospital work ''as really as a hospital should work.''

Thus, Veintidos was not limited to the rather sketchy ''Verification'' form transmitted by Ortiz. If she had been so limited she would not have seen much difference between a number of similar forms submitted by the General Counsel concerning employees who were hired by Veintidos, some of whom worked for HSR, and some from other employers. It is significant that when asked about one such applicant, whose verification form portrayed an appallingly poor work record, Veintidos admitted that she had not seen the verification form before the applicant was hired.

From an examination of these verification forms, it is clear that the forms themselves were not the sole criterion for hire. Some applicants had interviews with Veintidos, and were shown around the new hospital when it was open. Milton

[45] The various charges filed here range from 400 to 300 employees, but I think those figures reflect estimates of total employment, rather than employment in the relevant units.

[46] By this time, as testified to by Carlos Pineiro, and noted previously, about 100 people had been hired in the two units concerned here, of whom 89 were former HSR employees. According to Pineiro this figure represented almost all of the former HSR employees who were hired for HIMA.

Suarez was not accorded an interview and was not hired. Hildargis Rodriguez Colon, an employee in the medical and surgery department at HSR filed an application in October 1988 at HIMA, but was not given an interview. Her verification form showed attendance problems in 1987 and 1988, and an interview (warning) in September 1987 on account of ''problems with patients.'' Rodriguez was notified by her supervisor on November 13 that she would be working at HIMA the next day. She started to work there and was still employed at HIMA as of July 19, 1989.

It seems to me that this whole hiring process as it applied to HSR employees was really only a sham. To require longtime employees of HSR to fill out a lengthy application, and submit to verification and interviews with a person they had worked with there at HSR was needless and useless. Ninety five percent were going to be hired anyway, so why could Veintidos not have gone over to HSR (or not left there in the first place), picked up the personnel folders of the 95 percent, then brought them all over with the employees when HIMA opened. The reason why that was not done was a continuing effort by the employer here to make everyone believe that there was not one employer here, but two.

Suarez' employment record was not good, but so were not a lot of others. Respondent has not advanced any compelling reason why Suarez, looking at his verification form, and comparing it with many others who were hired, was not hired himself. The answer is in his active and militant role with the Union and in the expressed resentment to that role by management. I find that the failure to hire Suarez by November 14, 1988, is a violation of Section 8(a)(1) and (3) of the Act. *Grede Foundries*, 211 NLRB 710 (1974).

b. *Isabel Arriaga*

Isabel Arriaga Garcia was employed by HSR on August 18, 1986, as a registered nurse. She was a union delegate, and was one of the 21 people who signed a letter to Joaquin Rodriguez on April 13, 1987, asking for discussions on the move to CMT, and about Rodriguez' antiunion letter of August 30, 1985. Arriaga also participated in the abortive picket line in front of HSR in October 1988, where employees were frightened away by the sight of supervisors gathered in front of the hospital and watching the prospective pickets. There never was any actual picketing at that time, but the four union people who were there, Suarez, Arriaga, Carmen Merced, and Norma Flores, were not hired by HIMA when it opened a few weeks later.

Arriaga obtained an application for employment at HIMA from Milton Suarez. While she was filling it out she had some questions about some of the requested information, so she called Arelis Veintidos. Veintidos asked her where she got the application, and when Arriaga told her that she got it from the Union, Veintidos said that she could not receive that application because she, Veintidos, was the only one who could hand out applications. She instructed Arriaga to call her secretary and make an appointment so she could pick up a proper application.

So Arriaga made an appointment and went to the trailer on the HIMA job site,[47] Veintidos interviewed Arriaga at that time, and they had a general discussion about the job.

Arriaga never heard from Veintidos about her application. She finally called HIMA about 8:30 p.m. on the evening of November 13, when HSR was closing down, and Veintidos told her that her application was ''under evaluation.'' Arriaga finished her shift and went home. She did not hear from HIMA about her application, or about the reason or reasons why she was not hired.

Arelis Veintidos testified that she rejected Arriaga's application for employment because of information contained in the verification of employment references form sent to her from Ortiz at HSR, without any inquiry or investigation from Ortiz, or anyone else at HSR, or from Arriaga herself. The form contain records of two disciplinary actions, one on June 7, 1988, and the other on June 14, 1988. The first action is described as being for ''Attempt to alter patient's record,'' and the second, a 15-day suspension without pay, and a verbal admonishment for ''altering patient's record incongruent entries in maintenance of patient's record.'' It is apparent even from the verification form, that these two instances are really one. Beyond that, as in Suarez' case, there is a failure to exercise elementary prudence and fairness to find out what the reason was for the discipline administered to Arriaga. Moreover, as in Suarez' situation, there are other applicants in the group of verifications placed in evidence, with similar deficiencies but who were hired.

I find, as with Suarez, that the explanations advanced by the Respondents here are a pretext, and the real reason for the failure to hire Arriaga was her activity on behalf of the Union, particular in that abortive picketing situation in October 1988. I find, therefore, that Respondent has violated Section 8(a)(1) and (5) by refusing to hire Isabel Arriaga by November 14, 1988.

c. *Carmen Merced*

Carmen Merced Baez had worked at HSR since 1976. She started as an LPN and in 1981 received an Associates' degree in nursing and was reclassified as an RN. She worked as an RN in emergency, surgery, medicine, pediatrics, and in the laboratory. In 1986, she was awarded a job in the initial testing section of the laboratory and held that job until the hospital closed.

Merced was active in the Union from the beginning of the organizational campaign in 1983 and 1984. She passed out union literature, collected union authorization cards, and organized meetings at the homes of employees. In January 1984, Merced was the cosignatory, with Juan Garcia, of an open letter to employees urging that they vote for the Union. At the election Merced served as an observer for the Union, and afterwards she became a delegate for the surgery department at HSR, and a member of the Union's negotiating committee from 1986. In 1988 she participated in a march in May, and in the demonstration in October, when she, with Suarez, Flores, and Arriaga gathered in the view of management representatives and attempted without success to organize picketing by employees.

[47] This was early in 1988, Arriaga's application is dated February 3 (or March 2, depending on which position the month it in where is says 2/3/88 on the form).

Merced filed an application for employment at HIMA on October 21, 1988. She talked with Arelis Veintidos at the time she filed, and they had a discussion about rotating shifts. Merced insisted that she could not work on rotating shifts. Merced again visited HIMA on November 14 and was informed by Veintidos that her application was ''still in the evaluation process.''

A verification report was submitted by Ortiz to Veintidos on Merced. The report was undated, and reported a number of absences due to illness, personal problems and union leave, negotiations, illness of daughter, and annual leave. These instances all took place in 1987 and 1988 but no dates are given. There was an ''incident and interview'' on account of personal business during working hours, and a comment that ''This employee is not loyal to the institution, since she reaches the point of telling patients that if it were up to her, she would not hospitalize herself in this Institution.''

In addition to Merced's application form, a paper was introduced by Respondent CMT which, according to Veintidos, was attached to Merced's application. This was a note from Veintidos' secretary reporting a telephone message allegedly given by Merced to another secretary in which Merced said that she wanted to work ''only in the laboratory.''[48] In her direct examination Veintidos stated that there was no position for a nurse in the laboratory and that was the reason Merced was not hired.[49] Later, on cross-examination, Veintidos stated that the decision was based ''exclusively'' on the verification form itself.

This shift in the reasons for the decision not to hire Merced gives rise to a proper inference that the real reason for failure to hire was Merced's union activity. *DeLorean Cadillac*, 218 NLRB 1362 (1975). I think it must be clear from an evaluation of the haphazard manner in which the verification forms were prepared; no dates on the documents; no dates for alleged deficiencies or offenses; no investigation by Veintidos of ambiguous or unintelligible allegations about employees; discrepancies between those who were hired, with poor attendance records, and these with poor attendance records who were not hired; the lumping together of permissible absences due to illness or vacation with improper absences or tardiness; that the evaluation process, and the hiring process itself, was a sham. The verification forms were poorly prepared, the screening of the forms was at best haphazard and spotty, sometimes not even examined before hiring decisions were made. In this kind of clutter, any decision could have been made about anyone. In view of Respondents' union animus, discussed above, decisions about union activist are bound to be tainted by the antiunion feelings and personal dislike shown by management toward union activists. I find that the refusal to hire Merced was based on her union activities, and violated Section 8(a)(1) and (3) of the Act.

[48] I rejected a request by the General Counsel to call Aurora Diaz, the secretary who received the original message. I refused to reconsider that decision at the hearing, and in view of my decision here, I see no need to reconsider it now.

[49] Veintidos did not base her decision on Merced's reluctance to work rotating shifts. I note also that in this case, as well as that of Norma Flores, discussed below, Veintidos did not inform these applicants that there were no jobs in the positions they were seeking, nor did she offer them other opportunities in their profession as registered nurses, in which category there were many positions available.

d. *Norma Flores*

Norma Flores Baez began working at HSR in May 1982 as a registered nurse. She was assigned as a floor nurse, then went to the emergency room then, in 1983 or 1984 she became an epidemiology nurse where she remained until HSR closed in November 1988.

Flores had participated on the Union's bargaining committee in 1984, and was a union delegate. She participated in a march and vigil in March 1988 on behalf of the Union, and she was one of the four union supporters at the aborted October 1988 picketing demonstration. Along with Suarez, Arriaga, and Merced, she was seen by the management officials who were watching as these four people tried to persuade others to join their demonstration in front of Hospital San Rafael. After this, Flores participated with Suarez, Merced, and Elia Diaz in distributing a union flyer outside HSR at the end of October. Flores' name, together with notice of a meeting at her house, was printed on this flyer.

At the beginning of September 1988, Flores' supervisor, Rosuara Rodriguez, told Flores and the other employees in her department that management was going to give priority in employment at HIMA to present employees of HSR, and told them to make appointments to see Arelis Veintidos at HIMA. Flores received an appointment and went to see Veintidos, who was still located in the Triangle Engineering trailer. Veintidos explained all the things the new hospital was going to have in new facilities, and asked Flores what position she was going to apply for. Flores replied that she was going to apply for the job of epidemiological nurse, just as she was at HSR. There was some further discussion about fringe benefits and an advanced course that Flores wanted to take, then Flores filled out the application and left.

After this, all the other employees in Flores' department were invited to visit HIMA to become familiar with the physical layout, but Flores was not invited. On November 3, before HSR was closed, Supervisor Rosuara Rodriguez asked Flores for the hospital's disease control manual, and all protocols for control departments. She explained to Flores that they needed this material for some areas at HIMA. However, by November 11 Flores addressed a memorandum to Rodriguez explaining that the manual had not been returned from HIMA.

Flores received a form letter dated November 7 from Ortiz advising her that HSR was closing as of November 13, thanking her for her dedication and loyalty, and wishing her success in all future endeavors. Flores heard no more from Veintidos concerning her application, nor any reasons why the application was rejected.

In March 1989 Flores noticed advertisements in the newspapers for registered nurses at HIMA. On March 2, she filled out a new application for registered nurse provision and filed it with Iris Rosario in the personnel office at HIMA. Flores called the next week and was told that the application was ''in process of evaluation.'' She called again 2 weeks later and was told again that the application was ''in process of evaluation.'' Flores made no further calls, and received no letter or acknowledgement from HIMA.

Arelis Veintidos testified that Flores was not hired in November 1988 because she had applied for a position as an

epidemiological nurse, and that position did not exist at HIMA. Veintidos stated that the Department of Health and Human Services required that the position of Infection Control Coordinator be at a supervisory level, and involved many skills and functions which Flores did not possess.

Again I note that Veintidos made no explanation to Flores in their discussion in September about a position at the new hospital. Veintidos knew, because she knew Flores and Flores had told her, what position Flores was in, and what position she was applying for. But Veintidos must also have known about the HHS requirements, and the table of organization of HIMA. Yet she said nothing and merely let Flores file the application and leave.

Nor did Veintidos ever talk to Flores about the verification form supplied by Ortiz, which, she used as the reason why she did not hire Flores on her second try for employment in March 1989. This form, also undated, shows that Flores had time off, none of which appears to be unauthorized, except for possibly an hour and three-quarters lateness, and two disciplinary actions for, first, a meeting held on account of Flores's having been outside of her working area on January 9, 1988, during working hours, and the second, a cryptic statement dated only ''87'' showing a meeting held, with no discipline imposed, on account of ''fraudulent attitude.''

This apparently was the reason advanced by Respondents for denying Flores a job in 1989. No one attempted to explain what a ''fraudulent attitude'' is. Veintidos said she did not check this verification, or, indeed any of the others, with anyone, certainly not Ortiz, the Author, or Flores, the subject.

Here, again, I find that the reasons advanced by Respondents are not logical, nor reasonable, nor based on anything but vague, unsubstantiated allegations, or translation of allowable absences into excessive absenteeism. I find as in the above cases, that the failure to hire Norma Flores in November 1988, and again in 1989, were based upon her union activities and are violations of Section 8(a)(1) and (3) of the Act.

e. *Delia Diaz*

Delia Diaz Gonzalez worked at HSR as a medical records technician from July 1982 until after the hospital closed in November 1988. Diaz was a member of the Union, she was the alternate delegate for the medical records department at HSR, and she had participated in the negotiations in 1987, in the protest march and vigil in the spring of 1988 and had handed out union buttons and literature during the negotiations in 1987 and 1988.

Diaz applied for a position at HIMA by an application dated October 13, 1988. She had had an interview with Vientidos earlier, in August or September, at which Veintidos told Diaz about the new hospital. After she had filled out the application Diaz called Veintidos about the end of October. She did not call back so Diaz called a second time. Again she left a message, but Vientidos did not return her calls.

About November 7 Diaz received one of the form letters telling her that the hospital was closing, thank you and goodbye. Diaz' supervisor, Elsa Maldonado told her that the letter was a mistake, and to disregard the letter. Maldonado told Diaz that she had talked to Cyril Ollivierre, vice president for finance and administrator at HIMA, and he had told her that the employees in medical records were to work until the work was finished, or they heard from HIMA. Diaz continued to work until she finished her analysis work. She then told Maldonado that she was going to look for a job. Maldonado told her to take 2 weeks vacation and then to come back if she wanted to come back.[50]

About the end of November Diaz returned and spoke to Maldonado. Diaz said that she told Maldonado that she had not heard anything from HIMA, and that if she was not offered a job there she could not stay at San Rafael. Maldonado told her that if she was in her place she would have done the same thing. Maldonado told Diaz she had heard nothing about her situation. Diaz then left.

This conversation must have confused Maldonado, because she wrote a letter to Diaz dated November 30 in which she conveyed to Diaz her understanding from their conversations that Diaz was no longer interested in working at HSR. She went on to assure Diaz that as long as there was a job in that department Diaz could go on working in her present position. Maldonado asked Diaz to reply within the next 5 working days or she would ''understand that you do not wish to continue working for Hospital San Rafael.''

Diaz claimed in her testimony that she did not receive this letter until December 9, 9 days after it was written, and 2 days after the expiration of the 5 business day deadline contained in the letter. Diaz had no explanation of why she did not get the letter, but did say it was in her mailbox but she thought it was peculiar, because the stamp was not cancelled.

When she read the letter on December 9, Diaz went to the old hospital and found that the medical records department was closed. Diaz then called Maldonado at HIMA and explained that she had just received the letter, and that she was not refusing to work at HSR but she wanted to have some job security at the new hospital because HSR was closed. Maldonado could not give her any satisfaction so they talked for a while and then said goodbye. Diaz received nothing further from HIMA.

Now, at this point I must point out that the General Counsel is not claiming any violations of law in Diaz' case arising from anything which I have just described. It was not disputed that at least two other employees in the medical records department were transferred to HIMA in November 1988, but they had more seniority than Diaz. Another one or two employees in the department were not technicians, and thus in different job categories. What the General Counsel is claiming is that a person named Belen Guadelupe Diaz was hired in April 1989, who was not a prior employee of HSR, and another employee, Virginia Lebron, also not a former HSR employee, was hired on June 12, 1989, and that Delia Diaz should have been hired before these two employees. Thus, the date of the alleged violation in the failure to hire Diaz was, according to the General Counsel, April 4, 1989.

I have some difficulty with this. The General Counsel's theory is not clear, either in the record or the brief. But on the facts as I see them, Diaz was treated well and fairly by Maldonado, her supervisor. That Maldonado wrote the letter of November 30. I have no doubt, even though she did not testify. There is no evidence of an ulterior purpose in delaying the delivery of the letter, and no logical reason why Re-

[50] The date of this conversation is uncertain. Diaz was not asked about the date, and Maldonado did not testify.

spondent should have done it. Thus, I find that Diaz must have been negligent in some way, or the Postal Service failed in some way. This being so, then Respondent would be entitled to assume, hearing no reply within the time limit set in the letter, that Diaz was no longer interested in working for San Rafael.

This could explain why Vientidos could have logically assumed that Diaz was not working for San Rafael, and was not on a list of people either coming to HIMA or being laid off at HSR.

Thus, I find no violations of the law in the case of Delia Diaz.

6. After the injunction

a. *The alleged refusal to bargain*

After Judge Cerezo's Decision and Order on August 8, 1989, the Union attempted to start up the bargaining process directed by the Order. On August 10, Luis Alvarez Colon wrote to Carlos Pineiro, executive vice president of HIMA requesting that the hospital recognize and bargain with the Union as the representative of its employees in unit B.[51] Alvarez requested a meeting for Thursday, August 17 at the ''Conciliation and Arbitration bureau'' in Hato Rey.

Pineiro was on vacation, so Alvarez' letter was answered by Joaquin Rodriguez, president of HIMA, on August 18. Rodriguez pointed out that there was a 30-day appeal period from the judge's order, expressed the Hospital's intention to appeal, and to request therein a stay of the order, and indicated that if the stay was denied, they could begin any time after September 7 at a mutually convenient date, time and place. Apparently Rodriguez was in error as to his understanding of the legal status of Judge Cerezo's order, because on August 24 he wrote again to Alvarez recognizing the Union as the bargaining representative of the employees in the LPN and technicians unit (unit B) and asking the Union to send its proposals for a contact. Rodriguez said they would study the proposals and submit a counter proposal, then they could set a date to begin the negotiations.

Alvarez replied to this on August 28, asking for a meeting to set ''rules'' for the negotiations on September 5, 1989,[52] at the Conciliation and Arbitration Bureau. On September 1, Arelis Veintidos answered this letter, insisting that the hospital must receive the Union's proposals, study them, prepare and send counterproposals before any meeting could be scheduled. On the same day[53] Alvarez wrote to Vientidos again requesting an initial meeting to discuss the rules. He suggested Monday, September 11 at 10 a.m. at the Conciliation and Arbitration office in Hato Rey.

On September 11, there was some dispute about who showed up for this meeting, and when. Vientidos wrote to Alvarez on September 11 stating that representatives of HIMA were at the Conciliation and Arbitration Bureau on that morning at 10 a.m., but they could not meet with Alvarez because he was in another meeting for another hospital at the time.

Alvarez claimed that he was at the Conciliation and Arbitration office, but was never notified that Vientidos and her Attorney Heber Lugo Rigau, were looking for him there. There was a lot of testimony about this contretemps and a copy of the building security log showing that Veintidos and Lugo did come in that morning, but I consider this to be just an accident, some secretary forgetting to deliver or relay a message, and I attach no significance to the incident.

At this point I can take official notice that around the middle of September Puerto Rico was struck by a tropical storm, Hurricane Hugo, a real hurricane this time, which, while mainly confined to the north east part of the Island, including the San Juan area, did disrupt activities throughout the Commonwealth for some days.

After the hurricane, the next communication in this matter was a letter from Alvarez to Vientidos dated September 26 in which the Union requested certain information necessary for the drafting of ''a serious and responsible proposal for the negotiation of a agreement. The information requested was a list of all employees with names, salaries, positions and hiring dates, and a list of all fringe benefits. Another letter, written on the same date, concerned Milton Suarez' salary and his treatment by Veintidos. Alvarez delivered these two letters in person to Veintidos. They discussed the missing connection at the September 11 meeting, each, of course, blaming the other.

The parties finally got together on a meeting at the Conciliation and Arbitration Bureau on October 10 at 9 a.m.

The parties stipulated that at the October 10 meeting they negotiated some rules for the bargaining sessions. There was no testimony on further meetings between the parties before this hearing closed on May 21, 1990.

The refusal by Respondents to comply with Judge Cerezo's order between the time of the Union's demand for recognition, August 11, 1989, and Rodriguez' letter extending recognition on August 24 was unlawful. See *Maness v. Meyers*, 419 U.S. 449 (1975); *San Antonio Telephone v. A.T.T.*, 529 F.2d (5th Cir. 1976). The refusal by Respondents to meet until the Union submitted a full contract proposal, the Respondents had time to study the proposal, and then themselves prepared counterproposals, was an unlawful condition in violation of Section 8(a)(1) and (5) of the Act, and the court's order. *Chemung Contracting Corp.*, 291 NLRB 773 (1988); *Fountain Lodge, Inc*, 269 NLRB 674 (1984).

I agree with the General Counsel that the totality of Respondents' actions in the August 10–October 10 period displays an intent to delay negotiations just as their similar conduct in 1987 tended to stall and string out negotiations. Respondents have thus violated Section 8(a)(1) and (5) of the Act.

b. *The disciplining of Milton Suarez*

Milton Suarez testified on January 22, 1990, about his reinstatement and subsequent employment problems. His direct testimony was, somehow, not recorded at the hearing and does not appear in the transcript for that date. When they became aware of this the parties moved to reopen the hearing to recall Milton Suarez and receive the missing testimony. I granted their joint motion and the hearing was reopened on

[51] There was no formal disclaimer of interest or abandonment of the registered nurses covered by unit A, but it is clear from this, and from the General Counsel's brief, that unit A is no longer considered as represented by the Union. I will adjust my recommended remedy and order accordingly.

[52] The letter stated ''August 5,'' but that was obviously a typographical error.

[53] Some of these letters were hand delivered so they could be answered on the same day.

May 21, 1990, to accomplish this. Suarez did testify at that time in the same manner as he had in his appearance on January 22.

In order, hopefully, to avoid confusion as to this testimony, the reader of the record is referred to Suarez' direct testimony on pages 2226 through 2264, then to cross-examination by Lugo Rigau, counsel for Respondents CMT, TMCLP, and Joaquin Rodriguez beginning on page 1998 of the transcript, running through page 2028.

I would also note that there is no reference in the record to the receipt of General Counsel's Exhibits 203 through 213, which were introduced through Suarez. I, therefore, officially receive these numbered exhibits into evidence at this time, except for General Counsel's Exhibits 203(a) and (b) which was rejected and which appears in the rejected exhibit file.

The order of the district court directed the Respondents to ''*Reinstate Milton Suarez to his former position immediately*, or if such position does not exist, to a substantially equivalent position in the unit of licensed practical nurses and technicians.'' (Emphasis added.)

After the order was issued Milton Suarez advised Arelis Veintidos that he was ready to start working in the X-Ray department beginning on the next Monday, August 14. This letter was answered by Joaquin Rodriguez under date of August 15, and informed Suarez that ''As soon as the order issued by Honorable Judge Carmen Vargas De Cerezo is firm and final, we will accept you to start working as X-Ray technician *or in a substantially equivalent position, in the alternative that there is no X-Ray technician position available*'' (emphasis in original).

As a result of sober second thoughts, or perhaps legal advice, this communication was followed on August 24 by a letter from Veintidos to Suarez asking him to come to a meeting with her on August 29 or 31, or September 1 ''to start expediting the procedures related with your hiring.[54]

Veintidos and Suarez met on August 31. According to Suarez, Veintidos said that in order to reinstate him she needed the documents ''that she had requested from the rest of the employees to proceed with my appointment.'' Veintidos sent a confirmation letter on September 1 listing the documentation, as she put it, ''required by law'' in order to ''proceed with your employment contract.'' These documents were a health certificate; good conduct certificate; birth certificate; current professional license; evidence of continued formal education, including CPR; identification with photograph; and Social Security card.

On September 5, Suarez took the documents to HIMA and gave them to Veintidos secretary, Loraido Rivero. She gave him a ''document of appointment.'' Suarez read it over, and noticed that the salary was less than he had been earning at HSR, $5.15 per hour, as compared with $5.43. He also told Rivero that he could not sign a form saying that he agreed to follow the personnel manual and regulations, because he had not read nor seen the manual and regulations. Rivero referred him then to Veintidos who told him that that was the salary scale in the department, and that she did not have a personnel manual available at that time. Suarez then went to check with the Union, and returned on September 6 to sign the appointment. At the same time he wrote to Veintidos protesting the lower salary and the fact that he had not received the personnel regulations. Suarez returned to work, I infer, on or about September 6.

Whatever my views of this procedure to which Suarez was subjected, there is no allegation in the complaint that the hospital's conduct constituted an unfair labor practice, and it is certainly not my function to determine in this proceeding whether Judge Cerezo's order was properly complied with.

In any event, Suarez resumed his active role in union activities as soon as he returned to work. Even before he went back he participated in the distribution and handout of a flyer proclaiming the Union's ''great victory'' in the district court. Then, on September 28 he joined with a number of other employees in the X-Ray department to send a communication to Maria T. Dominguez, the hospital's auxiliary services manager, requesting a meeting with her to discuss staffing problems in the X-Ray department.

Suarez was distributing copies of this letter on October 3 in the X-Ray department when he was approached by Dr. Francisco Loubriel Mendez, the newly hired director of the department. Suarez testified that he was handing a copy of the letter to Luz Neida Lopez Rubet, a supervisor in the department, when Dr. Loubriel came up, asked to see a copy, read it, and said that it would bring more problems in the department. Loubriel then said that he wanted to talk about ''something personal between you and I,'' but Suarez told him that he was on his break, that he had been told he had to carry out his union activities on his own time in nonworking areas, and that if Dr. Loubriel wanted to talk, they could talk after Suarez finished his break.

After returning from his break Suarez was talking to a coworker, Jose Puello, when Loubriel came up and told Suarez that he had asked him to come to his office after the break. Loubriel and Suarez then went to the Doctor's office. Loubriel told Suarez that he was the boss and when he called Suarez to a meeting, he should leave what he was doing and come to the meeting immediately. Suarez said he meant no disrespect, but he could not leave patients to take care of other matters. Loubriel told him to do what he said and that was it. He told Suarez that he had came as director of the department as an independent contractor with the entire responsibility for the department, and he did not care about the Union, or anybody's rights, or the problems Suarez might have with the administration. He, Loubriel ''could do a lot of damage in the Department.'' He also said that he had been told that Suarez could ''damage the rest'' of the employees.

Suarez told Loubriel that he was not damaging (the department), because what he had done he did legally, whereas the hospital been found guilty of violating his rights, and they had been forced to reinstate him and to sit down and negotiate.

The meeting concluded with Loubriel and Suarez both expressing sorrow that they could not understand each other.

Dr. Loubriel's version of this encounter was much more concise, but the general outlines are very similar, Suarez was passing out literature. Loubriel asked him to meet. Suarez said he was on break. When he returned (Loubriel said it was 45 minutes) Loubriel had to go and get him to come to

[54] This and subsequent actions indicate that Veintidos did not understand that the judge's order called for ''immediate reinstatement,'' not a leisurely process of hiring as if Suarez were a new employee.

the meeting. There was some talk about the Union, but Loubriel denied ever boasting about being ''the boss,'' and denied saying that he could do a lot of harm in the department.

I do not feel in this instance that the General Counsel has established a prima facie case for a violation of law. I think both Suarez and Loubriel spoke the truth, as they recalled it. I think that Suarez was passing out literature, and Loubriel wanted to talk to him, as a new director, to explain how he viewed his new responsibilities. I think that Suarez did not report to Loubriel, but, by his own admission, was talking to another employee, it could have been for 30 or more minutes, after the break was over. If Loubriel was annoyed about that and if he told Suarez that he should report promptly when told, I can understand that. Moreover, if Loubriel told Suarez that he could damage the operation, or the other employees if he did not follow orders, that is, likewise, understandable.

Suarez impressed me as truthful, as I have said, but forgetful and muddled on times and details. I cannot accept his uncorroborated version of these events, and I do not find a violation of Section 8(a)(1) and (3) in this incident.

A second incident occurred about October 4 in the hospital in connection with a meeting between the technicians in the X-Ray department and their supervisor, Luz Neida Lopez. During this meeting, according to Milton Suarez, Lopez told the employees that they should think about how they were going to rotate shifts, for 7 a.m. to 4 p.m., 8 a.m. to 5 p.m., or 9 a.m. to 6 p.m. Suarez said that the employees were not in agreement with rotating shifts, and that he wanted to discuss the question with the Union. Lopez replied that the Union had nothing to do with the X-Ray department, and that there was no agreement between the Union and the hospital.

Lopez testified here, and denied that she ever said to Suarez that there was no union at the hospital. She did say to Suarez and the other employees that HIMA was Union, but that there was no collective-bargaining agreement, at that time. It still remained to be negotiated.

Here again, I note the similarity in the testimony, but here I find Lopez to be a credible witness, and in the absence of any corroboration of Suarez' story, I do not find that the General Counsel has established a prima facie case, based upon a preponderance of the credible evidence, and I do not find a violation of Section 8(a)(1) and (3).

The third incident in the complaint involving Milton Suarez alleges that he was issued a written warning on October 2, 1989.

Luz Neida Lopez testified that she had spoken to Suarez on several occasions after he returned to work in September 1989 about disappearing from the X-Ray department without notice. Suarez always said it would not happen again, but it did, so Lopez spoke about the problem to Arelis Veintidos. Veintidos thereupon prepared a ''Written Orientation Meeting'' form, listing several violations of hospital rules.

In connection with this warning, there was a meeting between Veintidos, Lopez, and Suarez where the specifics of the violations were discussed. The substance of the meeting, according to Suarez, was merely a listing of the violations, Suarez allegedly abandoned his work area without permission, interrupted other employees, concerned himself with the ''needs of the X-Ray Department'' which were properly matters for supervision, and not for Suarez, and generally being involved in nonwork activities on working time. Suarez denied that he had ever been warned about these things, but I do not credit that denial. I do credit Lopez' account, and I find that the warning was warranted by Suarez' activities in leaving his work area and interrupting the work of others.[55]

I therefore find no violation of Section 8(a)(1) and (3) in this warning incident.

IV. THE REMEDY

Having found that the Respondents herein have engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom and that they take certain affirmative actions designed to effectuate the policies of the Act.

Having found that Hospital San Rafael, Inc. and Centro Medico Del Turabo are alter egos and a single employer within the meaning of the Act, and that Hospital San Rafael failed and refused to bargain collectively and in good faith with the Union as the exclusive bargaining representative of its employees in units A and B, as described above between May 19 and November 14, 1988. I shall recommend that Hospital San Rafael post a notice to its former employees and others on the premises of its alter ego, Centro Medico del Turabo.

Since I have found that Centro Medico Del Turabo, the alter ego of Hospital San Rafael has, since on or about November 14, 1988, failed to recognize or bargain in good faith with the Union as the executive bargaining representative of its employees in unit B as described above; and has unilaterally determined wages, hours, and working conditions for its employees in unit B, without notice to or bargaining with the Union at its subsidiary, Hospital Interamericano de Mediciana Avanzada, I shall recommend that it immediately recognize the Union, and bargain collectively in good faith with the Union, and if agreement is reached, embody such agreement in a written contract; that it reimburse all of its employees in unit B for any differences in wages, hours, and other conditions of employment from those that they enjoyed as employees of Hospital San Rafael; and that said CMT offer to Milton Suarez, Carmen Merced, Isabel Arriaga, and Norma Flores, immediate and full reinstatement to their former or substantially equivalent positions, and make them whole for any losses they may have suffered on account of CMT's discrimination against them in accordance with the formulas set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In this case, the violations I have found are of such a grievous and aggravated nature as to show a calculated disregard for the statutory rights of employees and have caused employees to be deprived of their rights since the summer of 1987. In such case, I believe that a broad remedial order is warranted. *Hickmott Foods*, 242 NLRB 1357 (1979).

On the basis of the above findings of fact, and the entire record in this case, I make the following

[55] There is no tie-up of the warning about the needs of the department with the letter from employees to Dominguez dated September 28.

CONCLUSIONS OF LAW

1. Hospital San Rafael, Inc., a subsidiary of San Rafael Planning Corporation, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Centro Medico del Turabo, Inc., the general partner and principal owner of Turabo Medical Center Limited Partnership d/b/a Hospital Interamericano de Medicina Avanzada, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Hospital San Rafael, Inc. and Centro Medico del Turabo, Inc. are alter egos and a single employer within the meaning of the Act.

4. Centro Medico del Turabo is also a successor employer to Hospital San Rafael within the meaning of the Act.

5. Caribe Hospital Affiliates, Inc. is a joint employer with CMT and its subsidiaries, TMCLP and HIMA.

6. Union Nacional de Trabajadores de la Salud, affiliated with the National Union of Hospital and Health Care Employees, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

7. By failing and refusing to bargain collectively and in good faith with the Union from on or about July 29, 1987, to November 14, 1988, and by violating the terms of a settlement agreement entered into on May 19, 1988, Hospital San Rafael violated Section 8(a)(1) and (5) of the Act.

8. By refusing to recognize and bargain collectively with the Union in the bargaining units described below from November 14, 1988, to August 8, 1989, Centro Medico del Turabo as the alter ego to Hospital San Rafael, has violated Section 8(a)(1) and (5) of the Act.

9. By refusing to recognize and bargain collectively with the Union in the bargaining units described below, as the successor employer to Hospital San Rafael, Centro Medico del Turabo has violated Section 8(a)(1) and (5) of the Act.

10. By unilaterally and without notification to or consultation with the Union, changing wages, hours, and conditions of employment of employees in the units described below, Respondent Centro Medico del Turabo, as the alter ego of and as successor employer to Hospital San Rafael has violated Section 8(a)(1), (3), and (5) of the Act.

11. The Units appropriate for collective bargaining in this portion of the case are:

> Unit (A) *Included*: All registered nurses and pharmacists employed by Respondent at its hospital located in Caguas, Puerto Rico.
>
> *Excluded*: All other employes, office clerical employees, guards and supervisors as defined in the Act.
>
> Unit (B) *Included*: All licensed practical nurses and technicians employed by Respondent at its hospital located at Caguas, Puerto Rico, including escorts: EKG technicians; Respiratory Therapy technicians; X-Ray technicians; Operating Room Technicians; Dietary Technicians; Medical Records Technicians; Admission Clerks; Record Room Clerks; X-Ray Clerks; Diet Department Clerks; Respiratory Therapy Clerks; Pharmacy Clerks; Operating Room Clerks; Emergency Room Clerks; Ward Clerks; and Pharmacy Auxiliaries.
>
> *Excluded*: All other employees, office clerical employes, professional personnel, guards and supervisors as defined in the Act.

12. By refusing to rehire, or to continue to employ Milton Suarez, Carmen Merced, Isabel Arriaga, and Norma Flores Respondent Centro Medico del Turabo has violated Section 8()(1) and (3) of the Act.

13. By failing and refusing to bargain in good faith with the Union as the representative of its employees in unit B, described above, on and after August 8, 1989, and until October 20, 1989, Centro Medico del Turabo has violated Section 8(a)(1) and (5) of the Act.

[Recommended Order omitted from publication.]